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UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 5A

1996 REPLACEMENT

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PART IV.

CRIMINAL LAW AND PROCEDURE AND PRISONERS.

TITLE 22. CRIMINAL OFFENSES.

Chapter 1. General Provisions.

§ 22-103. Attempts to commit crime.

Cited in In re Tucker, App. D.C., 689 A.2d 1214 (1997).

§ 22-104. Second conviction.

Cited in United States v. Shuler, 123 WLR 693 (Super. Ct. 1995); Brown v. United States, App. D.C., 675 A.2d 953 (1996).

§ 22-104a. Penalty for felony after at least 2 prior felony convictions.

* * * * *

(b) For the purposes of this section:

(1) A person shall be considered as having been convicted of a felony if the person was convicted of a felony by a court of the District of Columbia, any state, or the United States or its territories; and

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(June 3, 1997, D.C. Law 11-275, § 2, 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-275 validated a previously made technical correction in (b)(1).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

Minor players. — Even a minor player could be deemed to join the conspiracy as long as that person understands the unlawful nature of the plan and voluntarily and intentionally joins in it. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

Jury instructions.

An aiding and abetting instruction directed the jury to the defendant's own affirmative conduct as to both the commission of the crimes and his participation in them, and in these circumstances, it was determined that the jury was able to obey the limiting instructions to disregard another defendant's admission of guilt as to the defendant. Erskines v. United States, App. D.C., 696 A.2d 1077 (1997).

Jury instruction governing conspiracy to commit robbery adequately explained requirement that defendant intended to commit the unlawful objective where it instructed jury that they had to find both 1) the existence of an agreement to rob and 2) that defendant joined the agreement with an understanding of its objective and with the intent to assist in its accomplishment. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

Cited in Irving v. United States, App. D.C., 673 A.2d 1284 (1996); United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 22-106. Accessories after the fact.

This section does not break the link between accessory and principal, but merely reduces the level of punishment of the accessory in relation to the principal. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

Elements. — The elements of accessory after the fact are: (1) the offense of first degree murder while armed has been committed; (2) defendant knew the offense had been committed; (3) knowing the offense had been committed, defendant provided assistance to the person who committed it; and (4) defendant did so with the specific intent to hinder or prevent the arrest, trial or punishment of the person who committed the crime. Jones v. United States, App. D.C. , 716 A.2d 160 (1998).

Multiple convictions of single accessory can be obtained. — Because this section clearly ties the punishment of the accessory to the underlying crime committed by the principal and because the accessory is considered to be an accomplice of the principal, multiple convictions of the accessory based on a single course of conduct can be obtained when one act forms, or would form, the basis for convicting the principal of multiple violations of the same statute. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

Evidence sufficient to convict for accessory after the fact to first degree murder while armed. — Evidence that defendant who witnessed offense of first-degree murder while armed tried to assist murderer by shooting at eyewitness, by aiding murderer in escape, and in sending letter to another witness in order to establish alibi, was sufficient to establish that defendant assisted murderer and did so with the intent to hinder or prevent his conviction. Jones v. United States, App. D.C. , 716 A.2d 160 (1998).

Evidence insufficient to sustain conviction as accessory after fact of murder or assault.

A defendant may not be convicted as an accessory after the fact to murder unless the victim was dead at the time the defendant committed the acts of assistance. Little v. United States, 709 A.2d 708 (D.C. 1998).

When the convictions of the principal merge, the convictions of the accessory must also merge; when the convictions of the principal do not merge, neither will the convictions of the accessory merge. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

Accessory convictions did not merge. — Where two accessory convictions for assault with intent to kill while armed involved multiple shots that injured two distinct victims, they did not merge, nor did the accessory to possession of a firearm during a crime of violence charge merge with either of the accessory to assault with intent to kill while armed convictions. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

Sentence upheld. — Sentence of twenty years for being an accessory after the fact to assault with intent to kill while armed held not improper. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

Sentence held excessive. — Sentence of imprisonment for fifteen years to life exceeded the statutory maximum of twenty years for a defendant convicted of accessory after the fact to first degree murder while armed. Jones v. United States, App. D.C. , 716 A.2d 160 (1998).

CHAPTER 2. ABORTION.

§ 22-201. Definition and penalty.

Constitutionality:
This section is constitutional with respect to post-viability abortions necessary for the health or life of the mother. Davis v. Columbia Hosp. for Women Med. Ctr., Inc., 125 WLR 205 (Super. Ct. 1997).

In general. — This section proscribes post-viability abortions, except where necessary to protect the life and health of the mother. Davis v. Columbia Hosp. for Women Med. Ctr., Inc., 125 WLR 205 (Super. Ct. 1997).

Physician must show good faith. — Generally, the determination of whether an abortion is necessary to protect the life or health of the mother is left to the discretion of the woman's attending physician. Presumably, a good faith belief, based upon standard medical treatment and diagnosis, that an attending physician had a reasonable belief that a post-viability abortion was necessary to save the life or health of the mother would provide a defense for the physician. To hold otherwise would create an unacceptable situation where a physician could be held strictly liable under a vague standard while acting in good faith. Davis v. Columbia Hosp. for Women Med. Ctr., Inc., 125 WLR 205 (Super. Ct. 1997).

CHAPTER 4. ARSON.

§ 22-401. Definition and penalty.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Concurrent sentences for arson, felony murder, and second-degree murder could not survive; concurrent sentences for the underlying felony and felony murder convictions violate the double jeopardy clause and fifth amendment, and concurrent sentences for second-degree murder and felony murder constitute dual punishment for one offense. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Victim's reentry to save dog was not an intervening event. — Arson victim's reentry into burning apartment to save his dog was not an extraordinary intervening event superseding the defendant's felonious act of setting the fire. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Cited in Russell v. United States, App. D.C., 701 A.2d 1093 (1997); Byrd v. United States, App. D.C., 705 A.2d 629 (1997).

§ 22-403. Malicious burning, destruction, or injury of another's property.

Section is not ambiguous. — There is a decided lack of ambiguity in this section. Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

Value may be proven by testimony of owner. — In a prosecution for destruction of property, evidence was sufficient to establish the value of an automobile damaged by the defendant where the owner testified as to the price paid for the automobile, and that it was in good working order when stolen. Terrell v. United States, App. D.C., 721 A.2d 957 (1998).

Right to jury trial. — In light of the 1993 amendment to § 16-705(b) and the 1994 amendments to § 22-504 and this section, assault and misdemeanor destruction of property are no longer jury-demandable crimes in the District of Columbia because the Council has reduced them to "petty" offenses as that term is defined in Sixth Amendment jurisprudence; neither of the two offenses is punishable by sufficiently harsh penalties, in addition to imprisonment, to break through the presumptive six-month ceiling and be deemed "serious." Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

Sufficiency of evidence. — Even though evidence was not sufficient to support a conviction for felony destruction of property, it was sufficient to support a conviction for misdemeanor malicious destruction of property. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Cited in Smith v. United States, App. D.C., 677 A.2d 1022 (1996); Burgess v. United States, App. D.C., 680 A.2d 1033 (1996); Bonhart v. United States, App. D.C., 691 A.2d 160 (1997); Russell v. United States, App. D.C., 701 A.2d 1093 (1997); James v. United States, App. D.C., 718 A.2d 1083 (1998).

CHAPTER 5. ASSAULT; MAYHEM; THREATS.

§ 22-501. Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse.

I. GENERAL CONSIDERATION.

Cross references.

As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Cited in Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996); Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); Lattimore v. United States, App. D.C., 684 A.2d 357 (1996); Stewart v. United States, App. D.C., 687 A.2d 576 (1996); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Wilson v. United States, App. D.C., 691 A.2d 1157 (1997); United States v. Thomas, 114 F.3d 228 (D.C. Cir. 1997); Payne v. United States, App. D.C., 697 A.2d 1229 (1997); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Russell v. United States, App. D.C., 701 A.2d 1093 (1997); Boykins v. United States, App. D.C., 702 A.2d 1242 (1997); Coates v. United States, App. D.C., 705 A.2d 1100 (1998); Bragdon v. United States, App. D.C., 717 A.2d 878 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998).

II. ASSAULT.

A. In General.

Merger of offenses. — Where the initial series of offenses committed against victim, which included his being punched in the face, urinated on, and having his pockets searched and emptied, occurred in rapid succession, the entire incident constituted one single assault rather than two separate assaults; thus, the two separate guilty verdicts were redundant, and the simple assault offense was merged into the assault with intent to rob. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Merger with mayhem. — Appellate court remanded case to vacate assault with a dangerous weapon conviction because it merged with a conviction for mayhem while armed. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

B. With Intent to Kill.

Prosecutor's gesture in explaining intent element not prejudicial. — Prosecutor's gesture in pointing his hand and finger at the defendant as if he had a gun was not prejudicial in that the prosecutor made the gesture in the context of explaining the intent element of assault with intent to kill while armed. Freeman v. United States, App. D.C., 689 A.2d 575 (1997).

Evidence of intent to kill. — Where the trial court ruled that doctor's testimony on victim's severe wounds was relevant to prove defendant's intent to kill, an essential element of one of the charged offenses, there was no abuse of discretion in its admission. Gethers v. United States, App. D.C., 684 A.2d 1266 (1996), cert. denied, 520 U.S. 1180, 117 S. Ct. 1458, 137 L. Ed. 2d 562 (1997).

Convictions for assault with intent to kill and mayhem upheld. — Identification evidence was sufficient to support convictions for assault with intent to kill while armed and mayhem while armed. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Accessory's sentence upheld. — Sentence of twenty years for being an accessory after the fact to assault with intent to kill while armed held not improper. Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

D. With Intent to Commit Robbery.

Person assaulted need not be same individual assailant intended to rob, etc.

This section does not require that the assault victim and robbery victim must be the same; thus, a conviction for assault with intent to commit robbery will stand where the assault of one victim is used to effectuate the robbery of another at the scene. Long v. United States, App. D.C., 687 A.2d 1331 (1996).

Evidence sufficient to support conviction for assault with intent to commit robbery.

In accord with bound volume. Gryce v. Lavine, App. D.C., 675 A.2d 67 (1996).

Evidence sufficient to support conviction of aider and abettor for assault with intent to commit robbery. — The specific intent of a defendant, charged and found guilty of aiding and abetting, is of no legal consequence, but where the evidence was sufficient to prove that the principal had the specific intent to rob the victim and that the defendant was in close proximity to the principal while he

was rifling through the unconscious victim's pockets and that defendant participated in the process of trying to remove the battered victim from the street and in the overall criminal scheme, finding that defendant was guilty of assault with intent to commit robbery was proper. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Evidence insufficient to sustain conviction for assault with intent to commit robbery. — Defendant's assault of two victims in order to effectuate his robbery of a third victim was insufficient to sustain a conviction for assault with intent to commit robbery on the first two victims. Long v. United States, App. D.C., 687 A.2d 1331 (1996).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon.

Assault with dangerous weapon is lesser included offense of robbery while armed. Lee v. United States, App. D.C., 699 A.2d 373 (1997).

Offense of assault with intent to kill while armed merges with assault with dangerous weapon, etc.

The trial court's entry of judgment on the lesser included offense of assault with a deadly weapon did not exceed the scope of the appellate court's mandate when it reversed the defendants' convictions for assault with intent to murder while armed. Willis v. United States, App. D.C., 692 A.2d 1380 (1997).

Single assault can support multiple convictions. — Where defendant fired two shots and knew of the presence of two people, two of four convictions could be sustained. James v. United States, App. D.C., 718 A.2d 1083 (1998).

Other issues concerning possession of a firearm. — Where defendant was convicted of possession of a firearm under § 22-3204(b) (PFVC) and violating § 23-1327, but acquitted of assault with a dangerous weapon under this section (ADW), then despite the fact that the § 23-1327 was not a qualifying predicate offense for PFCV, and defendant's acquittal of ADW was inconsistent with her PFCV conviction, the conviction was not reversed; inconsistent verdicts by themselves do not mandate reversal. Smith v. United States, App. D.C., 684 A.2d 307 (1996).

Evidence sufficient to sustain conviction for assault with dangerous weapon.

In accord with bound volume. Long v. United States, App. D.C., 687 A.2d 1331 (1996); James v. United States, App. D.C., 718 A.2d 1083 (1998).

Burden of proof. — In an adjudication of delinquency for assault with a deadly weapon, although the government met its burden of proving simple assault, it failed to prove beyond a reasonable doubt that the juvenile had used a weapon. In re M.M.S., App. D.C., 691 A.2d 136 (1997).

Instructions to jury. — Standard aiding and abetting instruction which defendant alleged to be "imprecise" and ambiguous because the alleged act of aiding and abetting was itself a crime, namely the possession of a pistol, was upheld where court found that the jury could not have been confused by the instruction. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

Refusal to strike juror denied defendant right to impartial jury. — Even though evidence was sufficient to convict defendant on the charges of first degree burglary while armed, assault with a dangerous weapon, possession of a firearm during a crime of violence, carrying a pistol without a license, and simple assault, refusal to grant defense counsel's request to strike a juror denied the defendant the right to trial by an impartial jury and required a new trial. Hughes v. United States, App. D.C., 689 A.2d 1206 (1997).

Cited in Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); Brown v. United States, App. D.C., 683 A.2d 118 (1996); Lyons v. United States, App. D.C., 683 A.2d 1066 (1996); Hawkins v. District of Columbia, 124 WLR 1125 (Super. Ct. 1996); Williams v. United States, App. D.C., 686 A.2d 552 (1996); Smith v. United States, App. D.C., 687 A.2d 581 (1996); Henderson v. United States, App. D.C., 687 A.2d 918 (1996); Butler v. United States, App. D.C., 688 A.2d 381 (1996); Lee v. United States, App. D.C., 699 A.2d 373 (1997); United States v. Sumler, 136 F.3d 188 (D.C. Cir. 1998); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); United States v. Bamiduro, App. D.C., 718 A.2d 547 (1998).

§ 22-503. Assault with intent to commit any other offense.

Judgment on lesser included offense upheld. — The trial court's entry of judgment on the lesser included offense of assault with a deadly weapon did not exceed the scope of the appellate court's mandate when it reversed the defendants' convictions for assault with intent to murder while armed. Willis v. United States, App. D.C., 692 A.2d 1380 (1997).

Cited in Partlow v. United States, App. D.C., 673 A.2d 642 (1996); United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d

1060 (1997); Freeman v. United States, App. D.C., 689 A.2d 575 (1997); Gardner v. United States, App. D.C., 698 A.2d 990 (1997).

§ 22-504. Assault or threatened assault in a menacing manner; stalking.

* * * * *

(b) Any person who on more than one occasion engages in conduct with the intent to cause emotional distress to another person or places another person in reasonable fear of death or bodily injury by willfully, maliciously, and repeatedly following or harassing that person, or who, without a legal purpose, willfully, maliciously, and repeatedly follows or harasses another person, is guilty of the crime of stalking and shall be fined not more than $500 or be imprisoned not more than 12 months, or both. Constitutionally protected activity, such as conduct by a party to a labor dispute in furtherance of labor or management objectives in that dispute, is not included within the meaning of this definition.

* * * * *

(June 3, 1997, D.C. Law 11-275, § 3, 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-275 validated a previously made technical correction in (b).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Constitutionality. — Since ordinary people can understand what conduct is criminalized, and since this section sufficiently limits the discretion of those who are responsible for enforcing it, this section is not unconstitutionally vague. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

This section is not substantially overbroad in light of its legitimate purpose. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Section is not ambiguous. — There is a decided lack of ambiguity in this section. Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

"Emotional distress" theory. — The "emotional distress" theory of stalking, which requires proof of the additional elements of malice and willfulness, along with the actus reus of repeatedly following or harassing, is not unconstitutionally vague. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

The phrase "willfully, maliciously and repeatedly" modifies both following and harassing; therefore, one may be prosecuted for on more than one occasion repeatedly harassing another person with the requisite intent. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

The phrase "on more than one occasion" requires that the acts described have occurred at two or more distinct times; if the perpetrator is being charged with harassment, the government must also show a "continuity of purpose" in that person's actions. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Elements of offense.

The definition of harassing requires that the victim be seriously alarmed, annoyed, frightened, or tormented, and that the conduct would cause a reasonable person to have such a reaction. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Course of conduct. — This section requires proof that a defendant engaged in the conduct on more than one occasion, that he or she acted repeatedly, and that this conduct was a course of conduct in that it showed a continuity of purpose; the government is not required to prove more than one course of conduct. United States v. Smith, App. D.C., 685 A.2d 380 (1996),

cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Combining protected actions with criminal intent. — While certain of defendant's actions may have appeared to be constitutionally protected when viewed separately, when such activities were repeated and combined with the criminal intent necessary to violate this section, they were no longer protected. United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Spitting on another is an assault punishable under this section.

In accord with first paragraph in bound volume. Saidi v. Washington Metro. Area Transit Auth., 928 F. Supp. 21 (D.D.C. 1996).

Evidence sufficient to establish defense of self-defense. — Where the jury could reasonably credit the testimony of the government's witnesses to find that defendant did assault officer, and where the jury reasonably could credit defendant with respect to the events that immediately preceded the alleged assault to find that officer, not defendant, was the initial aggressor, these facts alone were enough to demonstrate that this was not the kind of case that would require the jury to undertake a "bizarre reconstruction" of the evidence to acquit defendant of simple assault on the basis of self-defense. Wilson v. United States, App. D.C., 673 A.2d 670 (1996).

No obligation to specify means of assault in information. — The government has no obligation to specify in the information the means by which an assault was committed; Superior Court Criminal Rule 7(f) casts some of the burden on the defendant to pursue additional details of the charge against him. Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

Counts of simple assault and assault with intent to rob merged. — Where the initial series of offenses committed against victim, which included his being punched in the face, urinated on, and having his pockets searched and emptied, occurred in rapid succession, the entire incident constituted one single assault rather than two separate assaults; thus, separate guilty verdicts were redundant, and the simple assault offense was merged into the assault, with intent to rob. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Warrantless arrest for assault. — Section 23-581(a)(2) includes the crime of assault, as defined by this section, as a crime for which a warrantless arrest can be made. Saidi v. Washington Metro. Area Transit Auth., 928 F. Supp. 21 (D.D.C. 1996).

Right to jury trial. — In light of the 1993 amendment to § 16-705(b) and the 1994 amendments to § 22-403 and this section, assault and misdemeanor destruction of property are no longer jury-demandable crimes in the District of Columbia because the Council has reduced them to "petty" offenses as that term is defined in Sixth Amendment jurisprudence; neither of the two offenses is punishable by sufficiently harsh penalties, in addition to imprisonment, to break through the presumptive six-month ceiling and be deemed "serious." Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

Although assault was jury-triable under the common law, under this section, the offense is not classified as a serious offense with a maximum penalty of more than six months or 180 days imprisonment and neither the United States Constitution nor the statutes of the District of Columbia entitle a defendant to a jury trial for simple assault. Day v. United States, App. D.C., 682 A.2d 1125 (1996), cert. denied, 520 U.S. 1170, 117 S. Ct. 1435, 137 L. Ed. 2d 542 (1997).

Evidence insufficient to sustain a conviction. — The admission of an complainant's out-of-court declaration as an excited utterance exclusion to hearsay was in error when the declaration occurred during an interview with a police officer the day after the alleged assault and the complainant was "pretty calm"; and, the remaining evidence was insufficient to support a conviction. Portillo v. United States, App. D.C., 710 A.2d 883 (1998).

Evidence sufficient to support conviction of aider and abettor. — Where evidence was sufficient to prove that the principal had the specific intent to rob the victim and that the defendant aider and abettor was in close proximity to the principal while he was rifling through the unconscious victim's pockets and that defendant participated in the process of trying to remove the battered victim from the street and in the overall criminal scheme, finding that defendant was guilty of assault with intent to commit robbery was proper. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Cited in Bell v. United States, App. D.C., 676 A.2d 37 (1996); Bailey v. United States, App. D.C., 676 A.2d 461 (1996); United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997); Burgess v. United States, App. D.C., 680 A.2d 1033 (1996); Benlamine v. United States, App. D.C., 692 A.2d 1359 (1997); Johnson v. United States, App. D.C., 700 A.2d 240 (1997); In re Clark, App. D.C., 700 A.2d 781 (1997); Hayes v. United States, App. D.C., 707 A.2d 59 (1998); Kearney v. United States, App. D.C., 708 A.2d 262 (1998); Reyes-Contreras v. United States, App. D.C., 719 A.2d 503 (1998).

§ 22-504.1. Aggravated assault.

Cited in Burgess v. United States, App. D.C., 681 A.2d 1090 (1996).

§ 22-505. Assault on member of police force, campus or university special police, or fire department.

(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia, including any designated civilian employee of the Metropolitan Police Department, any campus or university special police officer, or any officer or member of any fire department operating in the District of Columbia; or any officer or employee of any penal or correctional institution of the District of Columbia, or any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District of Columbia, whether such institution or facility is located within the District of Columbia or elsewhere, or any inspector, investigator, emergency medical technician, or paramedic employed by the government of the District of Columbia, while engaged in or on account of the performance of his or her official duties, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both. It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he or she has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

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(June 3, 1997, D.C. Law 11-275, § 4, 44 DCR 1408; _____, 1999, D.C. Law 12- (Act 12-380), § 2, 45 DCR 4471; _____, 1999, D.C. Law 12- (Act 12-613), § 2, 46 DCR 1328.)

Cross references.

As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Effect of amendments.

D.C. Law 11-275 validated a previously made technical correction in (a).

D.C. Law-(D.C. Act 12-380) inserted "or any inspector, investigator, emergency medical technician, or paramedic employed by the government of the District of Columbia" following "elsewhere" in the first sentence of (a).

D.C. Law 12-(D.C. Act 12-613) inserted "any designated civilian employee of the Metropolitan Police Department" near the beginning of the first sentence in (a).

Temporary amendment of section. — Section 2 of D.C. Law 12-(Act 12-492) inserted "any designated civilian employee of the Metropolitan Police Department" near the beginning of (a).

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 2 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 2 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 11-275. — See note to § 22-504.

Legislative history of Law 12-(D.C. Act 12-380). — Law 12-(D.C. Act 12-380), the "Assault on an Inspector or Investigator and Revi-

talization Corporation Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-380 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-380) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Crime of violence. — Even though assault on a police officer is not one of the crimes of violence enumerated in § 22-3201(f) which defines a crime of violence, it would defy reason and common sense not to include assault on a police officer among the crimes listed in § 22-3201(f). Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996).

Grounds for arrest. — The defendant's interference with field sobriety tests being conducted by an officer and her refusal to obey the officer's order to return to the car in which she was riding provided grounds for her warrantless arrest. Rogala v. District of Columbia, 161 F.3d 44 (D.C. Cir. 1998).

Evidence sustained conviction, etc.

Evidence was sufficient to sustain the conviction for resisting police officers. United States v. Harrington, 108 F.3d 1460 (D.C. Cir. 1997).

Cited in Butler v. United States, App. D.C., 688 A.2d 381 (1996); Taylor v. District of Columbia, App. D.C., 691 A.2d 121 (1997); In re D.A.J., App. D.C., 694 A.2d 860 (1997); United States v. Kennedy, 133 F.3d 53 (D.C. Cir. 1998); Karriem v. District of Columbia, App. D.C., 717 A.2d 317 (1998).

§ 22-506. Mayhem or maliciously disfiguring.

Assault with a dangerous weapon was lesser included offense of mayhem while armed, etc.

Appellate court remanded case to vacate assault with a dangerous weapon conviction because it merged with a conviction for mayhem while armed. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Identification evidence was sufficient to support convictions for assault with intent to kill while armed and mayhem while armed. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Cited in Brown v. United States, App. D.C., 683 A.2d 118 (1996); Williams v. United States, App. D.C., 686 A.2d 552 (1996); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Southall v. United States, App. D.C., 716 A.2d 183 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998).

§ 22-507. Threats to do bodily harm.

Jury trial. — Prosecutions under the threats and unlawful entry statutes, with their maximum penalties of six months in prison, entitle the petitioners to trial by jury under § 16-705(b). Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

Cited in Covington v. United States, App. D.C., 698 A.2d 1033 (1997); Salmon v. United States, App. D.C., 719 A.2d 949 (1998).

CHAPTER 7. BRIBERY; OBSTRUCTING JUSTICE; RELATED OFFENSES.

Subchapter II. Bribery.

§ 22-712. Prohibited acts; penalty.

Cited in In re Tucker, App. D.C., 689 A.2d 1214 (1997).

Subchapter III. Obstructing Justice.

§ 22-721. Definitions.

Cited in In re Fogel, App. D.C., 679 A.2d 1052 (1996).

§ 22-722. Prohibited acts; penalty.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Alternative forms of offense. — This section sets forth three alternative, if somewhat overlapping, forms of conduct any one of which violates the statute if carried out with requisite intent. Scott v. United States, App. D.C., 672 A.2d 579 (1996).

"Endeavor." — The use of the term "endeavor" does not require success or even an overt attempt, it merely requires that the defendant have made any effort or essay to accomplish the evil purpose that the statute was enacted to prevent. If the threatening communication is part of the effort to impede the administration of justice, as long as the requisite knowledge and mens rea is otherwise established, the conduct is properly proscribed. Irving v. United States, App. D.C., 673 A.2d 1284 (1996).

Using intimidation or physical force different than sending threatening letter or communication. — "Using intimidating or physical force" is a different act than sending a "threatening letter or communication," so that it would make no sense to tell a jury that the presence or absence of the force determines or is even relevant to whether the defendant did send a threatening letter or communication. Scott v. United States, App. D.C., 672 A.2d 579 (1996).

Threatening letters or communications. — Requiring a threatening communication to embody a degree of menace somehow equivalent to actual physical force would be contrary to legislature's purpose in adding phrase "by threatening letter or communication" which was to expand range of conduct falling within that prohibition. Scott v. United States, App. D.C., 672 A.2d 579 (1996).

In order to decide whether defendant sent a threatening letter within the meaning of statute, a jury does not also have to decide or even consider whether he used intimidating or physical "force." Scott v. United States, App. D.C., 672 A.2d 579 (1996).

Impeding witnesses. — An endeavor to impede a witness is established where the threats are directly communicated to the person whose testimony the defendant seeks to deter. However, the obstruction of justice statute may also reach threats communicated to third parties when it is clear from other evidence presented, and from the actions of the defendant, that the defendant actually sought to implement those threats. Irving v. United States, App. D.C., 673 A.2d 1284 (1996).

A threatening communication such as defendant's discussions about killing witness, when part of a demonstrated and partially-implemented plan designed to realize those threats, is within reach of the law when those threats reflect the ultimate purpose of deterring a witness from testifying. The threatening communication need not be heard by the target at whom it was directed, only be part of the "endeavor" the defendant has undertaken. Irving v. United States, App. D.C., 673 A.2d 1284 (1996).

Jurisdiction of Superior Court.

Although an indictment contained language of prior version of this section, where the prosecutor's proof and the court's instructions encompassed conduct prohibited under both the former version and the present version of the obstruction of justice statute, the defendant suffered no prejudice that would warrant reversal. Woodall v. United States, App. D.C., 684 A.2d 1258 (1996), cert. denied, 520 U.S. 1130, 117 S. Ct. 1278, 137 L. Ed. 2d 354 (1997).

Evidence sufficient to support conviction. — Evidence that defendant wrote a letter to a potential witness in an attempt to establish an alibi was sufficient to support a conviction for obstruction of justice, notwithstanding the fact that the letter, found during the execution of a search warrant, was not dated and therefore could not be shown to conform precisely to the date set out in the indictment. Jones v. United States, App. D.C. , 716 A.2d 160 (1998).

Cited in Covington v. United States, App. D.C., 698 A.2d 1033 (1997).

§ 22-723. Tampering with physical evidence; penalty.

Loss of evidence. — Although officer's contact card was Jencks material subject to disclosure (18 U.S.C. § 3500), the loss of the card was found to be due to negligence, not gross negligence, there was no significant prejudice to defendant which would warrant striking the officer's testimony relating to the lost card. Woodall v. United States, App. D.C., 684 A.2d 1258 (1996), cert. denied, 520 U.S. 1130, 117 S. Ct. 1278, 137 L. Ed. 2d 354 (1997).

CHAPTER 7A. COMMERCIAL COUNTERFEITING.

§ 22-751. Definitions.

For the purposes of this chapter, the term:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, picture, seal, word, or advertisement or any combination of these adopted or used by a person to identify such person's goods or services and which is lawfully filed for record in the Office of the Secretary of State of any state or which the exclusive right to reproduce is guaranteed under the laws of the United States or the District of Columbia.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized. (June 3, 1997, D.C. Law 11-271, § 2, 43 DCR 4585.)

Legislative history of Law 11-271. — Law 11-271, the "Commercial Counterfeiting Criminalization Act of 1996," was introduced in Council and assigned Bill No. 11-660, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-362 and transmitted to both Houses of Congress for its review. D.C. Law 11-271 became effective on June 3, 1997.

§ 22-752. Trademark counterfeiting.

* * * * *

(e) Any items bearing a counterfeit mark and all personal property, including, but not limited to, any items, objects, tools, machines, equipment,

instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this chapter shall be seized by any law enforcement officer, including any designated civilian employee of the Metropolitan Police Department, in accordance with the procedures established by § 33-552.

* * * * *

(_____, 1999, D.C. Law 12- (Act 12-613), § 3, 46 DCR 1328.)

Effect of amendments. — D.C. Law 12-(D.C. Act 12-613) inserted "including any designated civilian employee of the Metropolitan Police Department" in the introductory language of (e).

Temporary amendment of section. — Section 3 of D.C. Law 12-(Act 12-492) inserted "including any designated civilian employee of the Metropolitan Police Department" in the introductory language of (e).

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 3 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 3 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 11-271. — See note to § 22-751.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

CHAPTER 9. CRUELTY TO CHILDREN.

§ 22-901. Definition and penalty.

Cited in Brown v. United States, App. D.C., 683 A.2d 118 (1996); Williams v. United States, App. D.C., 686 A.2d 552 (1996).

§ 22-902. Refusal or neglect of guardian to provide for child under 14 years of age.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

CHAPTER 11. DISTURBANCES OF THE PUBLIC PEACE.

§ 22-1107. Unlawful assembly; profane and indecent language.

I. GENERAL CONSIDERATION.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

§ 22-1112. Lewd, indecent, or obscene acts.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

§ 22-1114.1. Definitions.

For the purpose of § 22-1114.2, the term:

(1) "Health professional" means a person licensed to practice a health occupation in the District pursuant to § 2-3301.1.

(2) "Medical facility" includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

(3) "Person" shall not include:

(A) The chief medical officer of the medical facility or his or her designee;

(B) The chief executive officer of the medial facility or his or her designee;

(C) An agent of the medical facility; or

(D) A law enforcement officer in the performance of his or her official duty. (July 29, 1892, 27 Stat. 322, ch. 320, § 11a, as added Sept. 20, 1996, D.C. Law 11-157, § 2, 43 DCR 3699.)

Effect of amendments. — D.C. Law 11-157 added this section.

Emergency act amendments. — For temporary addition of section, see § 2 of the Interference with Medical Facilities and Health Professionals Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-306, July 26, 1996, 43 DCR 4205).

Legislative history of Law 11-157. — Law 11-157, the "Interference with Medical Facilities and Health Professionals Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-385, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 7, 1996, and June 19, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-286 and transmitted to both Houses of Congress for its review. D.C. Law 11-157 became effective on September 20, 1996.

§ 22-1114.2. Prohibited acts.

(a) It shall be unlawful for a person, except as otherwise authorized by District or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a medical facility or to willfully or recklessly disrupt the normal functioning of such facility by:

(1) Physically obstructing, impeding, or hindering the free passage of an individual seeking to enter or depart the facility or from the common areas of the real property upon which the facility is located;

(2) Making noise that unreasonably disturbs the peace within the facility;

(3) Trespassing on the facility or the common areas of the real property upon which the facility is located;

(4) Telephoning the facility repeatedly to harass or threaten owners, agents, patients, and employees, or knowingly permitting any telephone under his or her control to be so used for the purpose of threatening owners, agents, patients, and employees; or

(5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the medical facility or knowingly permitting any telephone under his or her control to be used for such purpose.

(b) A person shall not act alone or in concert with others with the intent to prevent a health professional or his or her family from entering or leaving the health professional's home.

(c) Subsections (a) and (b) of this section shall not be construed to prohibit any otherwise lawful picketing or assembly.

(d) Any person who violates subsections (a) or (b) of this section, upon conviction, shall be fined not more than $1,000, imprisoned for not more than 180 days, or both. (July 29, 1892, 27 Stat. 322, ch. 320, § 11b, as added Sept. 20, 1996, D.C. Law 11-157, § 2, 43 DCR 3699.)

Section references. — This section is referred to in § 22-1114.1.

Effect of amendments. — D.C. Law 11-157 added this section.

Emergency act amendments. — For temporary addition of section, see § 2 of the Interference with Medical Facilities and Health Professionals Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-306, July 26, 1996, 43 DCR 4205).

Temporary amendment of Reestablishment of Health Services Planning and Certificate of Need Program. — Sections 201 through 221 of D.C. Law 11-75 reestablished the Health Services Planning and Certificate of Need Program.

Section 301(b) of D.C. Law 11-75 provided that this act shall expire after 225 days of its having taken effect.

See §§ 2 and 3 of D.C. Law 11-133.

Section 5(b) of D.C. Law 11-133 provided that the act shall expire on the 225th day of its having taken effect.

Emergency Reestablishment of a Health Services Planning and Certificate of Need Regulatory Program. — For temporary reestablishment of a Health Services Planning and Certificate of Need Regulatory Program in the District of Columbia, see §§ 201-221 of the Interference with Medical Facilities and Health Professionals and Reestablishment of Health Services Planning and Certificate of Need Program Emergency Act of 1995 (D.C. Act 11-117, July 25, 1995, 42 DCR 4044).

For temporary re-establishment of a health services planning and certificate of need regulatory program in the District of Columbia, see §§ 2 through 23 of the Health Services Planning and Certificate of Need Program Emergency Act of 1995 (D.C. Act 11-151, November 9, 1995, 42 DCR 6550).

For temporary establishment of a health services planning and certificate of need regulatory program in the District of Columbia, see § 2-22 of the Health Services Planning Program Legislative Review Emergency Act of 1996 (D.C. Act 11-345, August 8, 1996, 43 DCR 4517).

For temporary establishment, on an emergency basis due to Congressional review, a health services planning and certificate of need regulatory program in the District of Columbia, see § 2-22 of the Health Services Planning Program Congressional Review Emergency Act of 1996 (D.C. Act 11-422, October 28, 1996, 43 DCR 6118).

For temporary establishment, on an emergency basis due to Congressional review, of a health services planning and certificate of need regulatory program in the District of Columbia, see § 2-22 of the Health Services Planning Program Second Congressional Review Emergency Act of 1996 (D.C. Act 11-489, January 2, 1996, 44 DCR 734), and see § 2-22 of the Health Services Planning Program Congressional Review Emergency Act of 1997 (D.C. Act 12-40, March 31, 1997, 44 DCR 2070).

Legislative history of Law 11-75. — Law 11-75, the "Interference with Medical Facilities and Health Professionals and Reestablishment

of Health Services Planning and Certificate of Need Program Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-374. The Bill was adopted on first and second readings on July 11, 1995, and July 29, 1995, respectively. Signed by the Mayor on August 11, 1995, it was assigned Act No. 11-136 and transmitted to both Houses of Congress for its review. D.C. Law 11-75 became effective on December 15, 1995.

Legislative history of Law 11-133. — Law 11-133, the "Health Services Planning and Certificate of Need Program Temporary Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-560. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 21, 1996, it was assigned Act No. 11-240 and transmitted to both Houses of Congress for its review. D.C. Law 11-133 became effective on May 29, 1996.

Legislative history of Law 11-157. — See note to § 22-1114.1.

Delegation of Authority Pursuant to D.C. Law 11-117, the "Interference with Medical Facilities and Health Professionals and Reestablishment of Health Services Planning and Certificate of Need Program Emergency Act of 1995." — See Mayor's Order 95-112, August 18, 1995.

Delegation of Authority Pursuant to the Health Services Planning and Certificate of Need Program Emergency Act of 1995, effective November 7, 1995 (D.C. Act 11-151). — See Mayor's Order 95-162, December 4, 1995.

§ 22-1121. Disorderly conduct.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

§ 22-1123. Obstructing bridges connecting D.C. and Virginia.

Effective with respect to conduct occurring on or after August 5, 1997, whoever in the District of Columbia knowingly and willfully obstructs any bridge connecting the District of Columbia and the Commonwealth of Virginia:

(1) Shall be fined not less than $1,000 and not more than $5,000, and in addition may be imprisoned not more than 30 days; or

(2) If applicable, shall be subject to prosecution by the District of Columbia under the provisions of District law and regulation amended by the Safe Streets Anti-Prostitution Amendment Act of 1996 (D.C. Law 11-130). (Aug. 5, 1997, 111 Stat. 782, Pub. L. 105-33, § 11712(e).)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

References in text. — The "regulation amended by the Safe Streets Anti-Prostitution Amendment Act of 1996," referred to in (2), is § 5 of D.C. Law 11-130, effective May 24, 1996, and found at 43 DCR 1570.

CHAPTER 13. FALSE PRETENSES; FALSE PERSONATION.

Sec.
22-1304. Falsely impersonating public officer or minister.

§ 22-1301. False pretenses.

Cited in Cash v. United States, App. D.C., 700 A.2d 1208 (1997).

§ 22-1304. Falsely impersonating public officer or minister.

* * * * *

(Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 22-1304; May 21, 1994, D.C. Law 10-119, § 2(h), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 2, 43 DCR 528.)

Effect of amendments.

D.C. Law 11-119 validated a previously made change.

Legislative history of Law 11-119. — Law 11-119, the "Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Editor's notes. — D.C. Act 11-198, which affected this section as set out in the 1996 Replacement Volume, became Law 11-119, effective May 17, 1996. The historical citation for this section and the notes relating to D.C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

§ 22-1305. False personation of inspector of departments of District.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

CHAPTER 15. GAMBLING.

Subchapter I. General Provisions.

Subchapter II. Legalization.

Subchapter I. General Provisions.

§ 22-1501. Lotteries; promotion; sale or possession of tickets.

Advertisement of Maryland State Lottery Games. — Section 2(a) of D.C. Law 11-272 provided that nothing in this section shall prohibit advertising a lottery by the Maryland State Lottery so long as Maryland does not prohibit advertising or otherwise publishing an account of a lottery by the District of Columbia. D.C. Law 11-272 became effective on June 3, 1997.

§ 22-1505. Gambling premises; definition; prohibition against maintaining; forfeiture; liens; deposit of moneys in Treasury; penalty; subsequent offenses.

* * * * *

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used: (1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of § 22-1501; (2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of § 22-1504; or (3) in maintaining any gambling premises; shall be subject to seizure by any designated civilian employee of the Metropolitan Police Department or any member of the Metropolitan Police force, or the United States Park Police, or the United States Marshal, or any Deputy Marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Mayor of the District of Columbia may, by order or by regulation, provide; provided, that if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

* * * * *

(_____, 1999, D.C. Law 12- (Act 12-613), § 4, 46 DCR 1328.)

Effect of amendments.

D.C. Law 12- (Act 12-613) inserted "designated civilian employee of the Metropolitan Police Department or any" in the first sentence of (c).

Temporary amendment of section. — Section 4 of D.C. Law 12-(Act 12-492) inserted "designated civilian employee of the Metropolitan Police Department or any" in (c).

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 4 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 4 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 4 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Subchapter II. Legalization.

§ 22-1516. Statement of purpose.

Gambling is highly regulated. — Gambling is a highly regulated activity and the Board is charged with primary responsibility for regulating the lottery as an exception to the general ban against gambling. Peterson v. District of Columbia Lottery & Charitable Games Control Bd., App. D.C., 673 A.2d 664 (1996).

Assignments. — Regulation promulgated in 1992 prohibiting assignment of lottery winnings did not prevent subsequent assignment of payments due on lottery ticket purchased in 1986. Peterson v. District of Columbia Lottery & Charitable Games Control Bd., App. D.C., 673 A.2d 664 (1996).

§ 22-1518. Advertising and promotion; sale and possession of lottery and numbers tickets and slips.

(a) Nothing in subchapter I of this chapter shall be construed to prohibit the advertising and promotion of excepted permissible gambling activities pursuant to § 22-1517, hereof, including, but not limited to, the sale, by agents authorized by the District of Columbia, and the possession of tickets, certificates, or slips for lottery and daily numbers games excepted and permissible pursuant to § 22-1517, hereof, and the sale, lease, purchase, or possession of tickets, slips, certificates, or cards for bingo, raffles, and Monte Carlo night parties, excepted and permissible pursuant to § 22-1517, hereof.

(b) Nothing in § 22-1501 shall prohibit advertising a lottery by the Maryland State Lottery so long as Maryland does not prohibit advertising or otherwise publishing an account of a lottery by the District of Columbia. (Mar. 10, 1981, D.C. Law 3-172, § 3, 27 DCR 4736; Apr. 11, 1987, D.C. Law 6-220, § 2(a)(3), 34 DCR 900; June 3, 1997, D.C. Law 11-272, § 2(a), 43 DCR 4672; May 22, 1998, D.C. Law 12-114, § 2, 45 DCR 486.)

Effect of amendments. — D.C. Law 11-272 added (b).

D.C. Law 12-114 validated the designation of the previously undesignated text at the beginning of the section as (a); and, in (a), substituted "including, but not limited to, the" for "including but not limited to: the."

Legislative history of Law 11-272. — Law 11-272, the "Lottery Games Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-698. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-371 and transmitted to both Houses of Congress for its review. D.C. Law 11-272 became effective on June 3, 1997.

Legislative history of Law 12-114. — Law 12-114, the "Criminal Amendment Act of 1998," was introduced in Council and assigned Bill

No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

CHAPTER 16. GAME AND FISH LAWS.

§ 22-1630. Seizure of hunting and fishing equipment; sale at public auction and disposal of proceeds; disposal of property not sold at auction; payment of valid liens after sale.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal, or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer, or any designated civilian employee of the Metropolitan Police Department, upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Mayor. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the District of Columbia Council.

* * * * *

(_____, 1999, D.C. Law 12-(Act 12-613), § 5, 46 DCR 1328.)

Effect of amendments. — D.C. Law 12-(Act 12-613) inserted "or any designated civilian employee of the Metropolitan Police Department" in the first sentence of (a).

Temporary amendment of section. — Section 5 of D.C. Law 12-(Act 12-492) inserted "or any designated civilian employee of the Metropolitan Police Department" in the first sentence of (a).

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 5 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 5 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 5 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Met-

ropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

CHAPTER 18. BURGLARY.

§ 22-1801. Definition and penalty.

Refusal to strike juror denied defendant right to impartial jury. — Even though evidence was sufficient to convict defendant on the charges of first degree burglary while armed, assault with a dangerous weapon, possession of a firearm during a crime of violence, carrying a pistol without a license, and simple assault, refusal to grant defense counsel's request to strike a juror denied the defendant the right to trial by an impartial jury and required a new trial. Hughes v. United States, App. D.C., 689 A.2d 1206 (1997).

Action constituting entry. — When defendant reached her hand and part of her arm through a security gate to open a door and reached through the door to pour liquid on the kitchen floor of the dwelling, the jury could reasonably find that the defendant actions constituted "entry". Davis v. United States, App. D.C., 712 A.2d 482 (1998).

Evidence sufficient to sustain conviction for burglary in first degree.

In accord with bound volume. Gethers v. United States, App. D.C., 684 A.2d 1266 (1996), cert. denied, 520 U.S. 1180, 117 S. Ct. 1458, 137 L. Ed. 2d 562 (1997); Davis v. United States, App. D.C., 712 A.2d 482 (1998).

Evidence sufficient to support finding of specific intent to commit a crime therein. — Defendant's repeated threats toward the residents of house into which she entered and started a fire and her simultaneous statements revealed unmistakably her intent to inflict bodily harm on persons within the house. Davis v. United States, App. D.C., 712 A.2d 482 (1998).

Cited in Womack v. United States, App. D.C., 673 A.2d 603 (1996); Zellers v. United States, App. D.C., 682 A.2d 1118 (1996); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Newman v. United States, App. D.C., 705 A.2d 246 (1997); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Page v. United States, App. D.C., 715 A.2d 890 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998).

CHAPTER 21. KIDNAPPING.

§ 22-2101. Definition and penalty; conspiracy.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Convictions rendered under alternate theories must merge. — While evidence supported each of defendants fourteen convictions, four kidnapping convictions rendered under alternate theories of intent had to merge to only two convictions. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

Convictions of kidnapping and murder do not merge because each charge requires proof of an element that the other does not. Parker v. United States, App. D.C., 692 A.2d 913 (1997).

"Parent." — Once a defendant presents some evidence that he was a "parent" within

the statutory meaning, the jury must be allowed to decide that issue on proper instructions as part of the ultimate question of whether the government has proven its case beyond a reasonable doubt. Byrd v. United States, App. D.C., 705 A.2d 629 (1997).

A step-parent standing in loco parentis may be a "parent" within the meaning of this section; thus, such a person standing in the place of a biological parent at the time of a kidnapping is exempt from prosecution. Byrd v. United States, App. D.C., 705 A.2d 629 (1997).

Where a defendant claims in loco parentis status, the parent exception to this section is not a defense if the defendant has engaged in separate felonious conduct during the kidnapping that exposes the child to a serious risk of death or bodily injury. Byrd v. United States, App. D.C., 705 A.2d 629 (1997).

Cited in Womack v. United States, App. D.C., 673 A.2d 603 (1996); United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997); Brown v. United States, App. D.C., 683 A.2d 118 (1996); United States v. Seals, 130 F.3d 451 (D.C. Cir. 1997); Hicks v. United States, 707 A.2d 1301 (D.C. 1998).

CHAPTER 23. LIBEL; BLACKMAIL; EXTORTION; THREATS.

§ 22-2307. Threatening to kidnap or injure a person or damage his property.

Cited in Bell v. United States, App. D.C., 676 A.2d 37 (1996); Ko v. United States, App. D.C., 694 A.2d 73 (1997); Southall v. United States, App. D.C., 716 A.2d 183 (1998).

CHAPTER 24. MURDER; MANSLAUGHTER.

§ 22-2401. Murder in the first degree — Purposeful killing; killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate an offense punishable by imprisonment in the penitentiary, or without purpose to do so kills another in perpetrating or in attempting to perpetrate any arson, as defined in § 22-401 or § 22-402, first degree sexual abuse, first degree child sexual abuse, first degree cruelty to children, mayhem, robbery, or kidnaping, or in perpetrating or attempting to perpetrate any housebreaking while armed with or using a dangerous weapon, or in perpetrating or attempting to perpetrate a felony involving a controlled substance, is guilty of murder in the first degree. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 798; June 12, 1940, 54 Stat. 347, ch. 339; 1973 Ed., § 22-2401; Sept. 26, 1992, D.C. Law 9-153, § 2(a), 39 DCR 3868; May 23, 1995, D.C. Law 10-257, § 401(b)(1), 42 DCR 53; May 16, 1998, D.C. Law 12-113, § 2, 44 DCR 6931.)

I. GENERAL CONSIDERATION.

Effect of amendments.
D.C. Law 12-113 inserted "first degree child sexual abuse, first degree cruelty to children."

Legislative history of Law 12-113. — Law 12-113, the "Felony Murder Amendment Act of 1997," was introduced in Council and assigned

Bill No. 12-139, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 17, 1997, it was assigned Act No. 12-176 and transmitted to both Houses of Congress for its review. D.C. Law 12-113 became effective on May 16, 1998.

Second degree murder is an included offense under an indictment for felony murder, etc.

Concurrent sentences for arson, felony murder, and second-degree murder could not survive; concurrent sentences for the underlying felony and felony murder convictions violate the double jeopardy clause and fifth amendment, and concurrent sentences for second-degree murder and felony murder constitute dual punishment for one offense. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Convictions of kidnapping and murder do not merge because each charge requires proof of an element that the other does not. Parker v. United States, App. D.C., 692 A.2d 913 (1997).

Victim's reentry to save dog was not an intervening event. — Arson victim's reentry into burning apartment to save his dog was not an extraordinary intervening event superseding the defendant's felonious act of setting the fire. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Convictions for felony murder and premeditated murder merged, and the former thus would be vacated. Devonshire v. United States, App. D.C., 691 A.2d 165 (1997), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997).

Accessory after the fact to murder while armed. — The elements of accessory after the fact to first degree murder while armed are: (1) the offense of first degree murder while armed has been committed; (2) defendant knew the offense had been committed; (3) knowing the offense had been committed, defendant provided assistance to the person who committed it; and (4) defendant did so with the specific intent to hinder or prevent the arrest, trial or punishment of the person who committed the crime. Jones v. United States, App. D.C. , 716 A.2d 160 (1998).

Cited in Veney v. United States, App. D.C., 681 A.2d 428 (1996); Lyons v. United States, App. D.C., 683 A.2d 1066 (1996); Lyons v. United States, App. D.C., 683 A.2d 1080 (1996); Johnson v. United States, App. D.C., 683 A.2d 1087 (1996); Thomas v. United States, App. D.C., 685 A.2d 745 (1996); Stewart v. United States, App. D.C., 687 A.2d 576 (1996); Scales v. United States, App. D.C., 687 A.2d 927 (1996); Smith v. United States, App. D.C., 687 A.2d 1356 (1996); Patton v. United States, App. D.C., 688 A.2d 408 (1997); Wilson v. United States, App. D.C., 691 A.2d 1157 (1997); Reaves v. United States, App. D.C., 694 A.2d 52 (1997); Payne v. United States, App. D.C., 697 A.2d 1229 (1997); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Pettiford v. United States, App. D.C., 700 A.2d 207 (1997); Johnson v. United States, App. D.C., 701 A.2d 1085 (1997); Boykins v. United States, App. D.C., 702 A.2d 1242 (1997); Newman v. United States, App. D.C., 705 A.2d 246 (1997); McClellan v. United States, App. D.C., 706 A.2d 542 (1997), cert. denied, — U.S. —, 118 S. Ct. 2073, 141 L. Ed. 2d 149 (1998); Prophet v. United States, App. D.C., 707 A.2d 775 (1998); Peyton v. United States, 709 A.2d 65 (D.C. 1998); Wilson v. United States, App. D.C., 711 A.2d 75 (1998); United States v. Wilson, 160 F.3d 732 (D.C. Cir. 1998); Page v. United States, App. D.C., 715 A.2d 890 (1998); Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

III. FELONY MURDER.

Elements necessary for felony murder conviction.

In a prosecution for felony murder, the government need not establish that the killing was intended or even foreseeable, only that there was a direct causal link between the felonious misconduct and the killing. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Intent to commit robbery. — The evidence of intent to rob one victim at one location was sufficient to support the attempted robbery of another victim moments later at a separate location and, consequently, was a sufficient predicate for the felony murder of the second victim. Long v. United States, App. D.C., 687 A.2d 1331 (1996).

Merger of convictions for premeditated murder and felony murder of same victim. — While evidence supported each of defendants fourteen convictions, premeditated murder conviction and three felony murder convictions must be reduced to a single murder conviction. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

Defendant cannot remain convicted of premeditated murder and felony murder of the same decedent, nor of both felony murder and the underlying felony. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

IV. PROCEDURE.

D. Evidence.

Ammunition charge severable from murder charge. — Introduction of evidence of murders committed with a .38 caliber weapon in a separate trial on illegal possession of .38 caliber ammunition would have created an extreme risk of prejudice no matter what instructions the judge gave regarding the limited use of evidence; thus ammunition charge should have been severed from murder charges. Bright v. United States, App. D.C., 698 A.2d 450 (1997).

Evidence found admissible.
Evidence of .38 caliber ammunition found in defendant's possession five days after murders were committed with a .38 caliber weapon was direct and substantial proof that five days earlier defendant was the gunman who had fired the .38 caliber bullets into the victims; thus, the evidence would have been admissible in a separate trial concerning the murders. Bright v. United States, App. D.C., 698 A.2d 450 (1997).

E. Instructions.

Proper instruction on second degree murder as lesser included offense.
Jury should have been instructed on the lesser included offense of second degree murder while armed where defense counsel expressly requested the instruction, and where such an instruction was supported (although weakly) by the evidence; counsel's statement that there was no premeditation due to the "frenzied" nature of the killing was an oblique but sufficient allusion to witness testimony that the shooting had been preceded by an argument. Shuler v. United States, App. D.C., 677 A.2d 1014 (1996).

G. Sentence.

Aggravating factors warranting sentence of life imprisonment without parole. — The prosecutor proved beyond a reasonable doubt the presence of aggravating factors warranting imposition of a sentence of life imprisonment without the possibility of parole. Henderson v. United States, App. D.C., 678 A.2d 20 (1996).

§ 22-2403. Murder in the second degree.

I. GENERAL CONSIDERATION.

A. In General.

Double jeopardy.
Concurrent sentences for arson, felony murder, and second-degree murder could not survive; concurrent sentences for the underlying felony and felony murder convictions violate the double jeopardy clause and fifth amendment, and concurrent sentences for second-degree murder and felony murder constitute dual punishment for one offense. Bonhart v. United States, App. D.C., 691 A.2d 160 (1997).

Cited in United States v. Williams-Davis, 90 F.3d 490 (D.C. Cir. 1996); Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); Lyons v. United States, App. D.C., 683 A.2d 1066 (1996); Powell v. United States, App. D.C., 684 A.2d 373 (1996); Willis v. United States, App. D.C., 692 A.2d 1380 (1997); United States v. Williams, App. D.C., 697 A.2d 1244 (1997); Pettiford v. United States, App. D.C., 700 A.2d 207 (1997); Graham v. United States, App. D.C., 703 A.2d 825 (1997); Newman v. United States, App. D.C., 705 A.2d 246 (1997); Little v. United States, 709 A.2d 708 (D.C. 1998); Wilson v. United States, App. D.C., 711 A.2d 75 (1998).

B. Other Offenses Distinguished.

"Manslaughter" defined.
In this jurisdiction, a homicide may constitute manslaughter where a killing is not committed with a specific intent to kill or to do serious bodily injury, or not in conscious disregard of an extreme risk of death or serious bodily injury; thus, the burden of establishing malice as an element of the offense is based on a subjective standard applicable to the individual defendant on trial. United States v. Lindsay, 124 WLR 2021 (Super. Ct. 1996).

III. PROCEDURE.

D. Evidence.

Evidence sufficient to sustain aiding and abetting conviction. — From all the evidence, most significantly from the fact that defendant furnished the murder weapon to the murderer, a jury could readily have found that she aided and abetted the murder. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

E. Instructions.

Manslaughter instruction. — A defendant is entitled to a manslaughter instruction where there is evidence of mitigating factors which would undermine the government's evidence as to the defendant's awareness of the risk or intent to kill or commit serious bodily injury that thereby reduces the level of homicide from murder in the second degree to manslaughter. United States v. Lindsay, 124 WLR 2021 (Super. Ct. 1996).

Instructions on aiding and abetting. — Standard aiding and abetting instruction which defendant alleged to be "imprecise" and ambiguous because the alleged act of aiding and abetting was itself a crime, namely the possession of a pistol, was upheld where the court found that the jury could not have been confused by the instruction. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

Harmless error where court failed to instruct on defendant's age. — In a prosecution for second degree murder, the trial court's failure to instruct the jury that the accused's age is a factor for consideration in determining culpability for involuntary manslaughter was harmless error where the issue was not central to the case; the theory of the defense was not that the accused could not appreciate the risk of danger because of his age but that he took every precaution to assure that

the weapon was unloaded and failed because of a defect in the weapon. White v. United States, App. D.C., 692 A.2d 1365 (1997).

G. Sentence.

Separate sentences for convictions under alternate theories or charges. — Where the jury found defendant guilty first as an aider and abettor and then on a conspiracy theory, and where the court imposed on defendant two separate sentences for murder for only one killing, one of the two murder convictions must be vacated. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

§ 22-2404. Penalty for murder in first and second degrees.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Notice. — Defendant was properly put on notice that the government would be seeking a sentence of life without possibility of parole where notice was filed with the trial court and mailed and faxed to defendant's counsel. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

This section's use of the term "notify" rather than "serve" indicates that this section was not intended to establish such formal procedures as to encompass the unusual requirement of personal service. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

Prosecution is not required to set forth the specific aggravating factors that the government intends to rely upon in its notice to the defendant of its intent to seek a sentence of life imprisonment without parole. Page v. United States, App. D.C., 715 A.2d 890 (1998).

Same felony may serve as predicate offense and aggravating factor. — The same felony may be used both as the predicate offense for a felony murder charge and as an aggravating factor in imposing life without parole. Page v. United States, App. D.C., 715 A.2d 890 (1998).

Sentence of life without parole. — District of Columbia's sentencing scheme narrows the class of murderers eligible for the ultimate sentence — life without parole — to those convicted of first-degree murder and allows the trial judge to consider the presence of aggravating factors and mitigating circumstances, and to exercise discretion in imposing sentence. Page v. United States, App. D.C., 715 A.2d 890 (1998).

Cited in Heard v. United States, App. D.C., 686 A.2d 1026 (1996).

§ 22-2404.1. Sentencing procedure for murder in the first degree.

* * * * *

(b) In determining the sentence, the court shall consider whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:

(1) The murder was committed in the course of kidnapping or abduction, or an attempt to kidnap or abduct;

* * * * *

(11) The murder is committed after substantial planning; or

* * * * *

(June 3, 1997, D.C. Law 11-275, § 5, 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-275 validated previously made technical and stylistic corrections in (b)(1) and (11).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Sentence of life without parole. — District of Columbia's sentencing scheme narrows the class of murderers eligible for the ultimate sentence — life without parole — to those

convicted of first-degree murder and allows the trial judge to consider the presence of aggravating factors and mitigating circumstances, and to exercise discretion in imposing sentence. Page v. United States, App. D.C., 715 A.2d 890 (1998).

"Especially heinous, atrocious, or cruel." — The application of subdivision (b)(4) of this section is not limited to instances where the victim is tortured or suffers extreme physical pain. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

Because the trial court made sufficient findings setting out the specific factors upon which it relied in determining that the defendant's conduct was "especially heinous, atrocious, or cruel," the court would not address the defendant's contention that the language of subdivision (b)(4) was unconstitutionally vague. Parker v. United States, App. D.C., 692 A.2d 913 (1997).

Findings of fact sufficient to support sentence. — A trial court's finding of fact stating that it had found beyond a reasonable doubt that the murder committed by defendant was especially heinous, atrocious, and cruel was sufficient to support its sentence of life imprisonment without parole pursuant to this section. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

Nothing in the language of this section requires the trial court to detail for the record in its written findings the process by which it comes to the conclusion that one of the statutory aggravating circumstances exists. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

Absent a request by the defense, subsection (c) of this section does not require the trial court to detail for the record the reasons for its finding that an aggravating circumstance existed. Rider v. United States, App. D.C., 687 A.2d 1348 (1996).

The trial court satisfied the requirements of this section in issuing a written order, incorporating the trial court's oral findings, setting out the statutory basis and facts underlying its decision to impose life imprisonment without parole. Parker v. United States, App. D.C., 692 A.2d 913 (1997).

Aggravating circumstances. — Where the government proved two aggravating circumstances, namely that (1) the murder was especially heinous, atrocious, or cruel; and (2) the victim was especially vulnerable because of age, imposing a sentence of life imprisonment without parole was appropriate. Henderson v. United States, App. D.C., 678 A.2d 20 (1996).

Prosecution is not required to set forth the specific aggravating factors that the government intends to rely upon in its notice to the defendant of its intent to seek a sentence of life imprisonment without parole. Page v. United States, App. D.C., 715 A.2d 890 (1998).

Same felony may serve as predicate offense and aggravating factor. — The same felony may be used both as the predicate offense for a felony murder charge and as an aggravating factor in imposing life without parole. Page v. United States, App. D.C., 715 A.2d 890 (1998).

Cited in Devonshire v. United States, App. D.C., 691 A.2d 165 (1997), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997).

§ 22-2405. Penalty for manslaughter.

No ineffective assistance of counsel found. — No prejudice found where trial counsel incorrectly advised defendant that the charge of voluntary manslaughter carried a five-year mandatory minimum term of incarceration due to the armed element. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Since defendant did not claim that he knew about victim's prior conviction for armed robbery, the evidence would have been inadmissible, and defendant could not show prejudice from counsel's failure to renew his request for its admission. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Counsel's failure to request involuntary manslaughter instruction. — Defendant could not prevail on his challenge to the court's ruling on the § 23-110 motion on the basis of counsel's failure to request instructions on involuntary manslaughter and the "castle doctrine", where defendant could not show that counsel's performance was deficient given the controlling law and the evidence of record. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

"Reasonable efforts" instruction to deadlocked jury permissible. — Where jury was deadlocked on the second-degree murder count, the trial court did not err by providing the jury with a "reasonable efforts" instruction (allowing conviction for the lesser offense of manslaughter), over defense objection, rather than an "acquittal first" instruction. Powell v. United States, App. D.C., 684 A.2d 373 (1996).

Evidence did not support involuntary manslaughter claim. — Evidence of the severity of decedent's wounds, including many of the defensive type to the hands and arms and well over 70 wounds to the decedent's head, undercut defendant's claim of involuntary manslaughter. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Cited in Hammon v. United States, App. D.C., 695 A.2d 97 (1997); United States v. Williams, App. D.C., 697 A.2d 1244 (1997).

CHAPTER 25. PERJURY; RELATED OFFENSES.

§ 22-2511. Perjury.

Section references. — This section is referred to in §§ 3-281.4, 3-704, 6-2321 and 6-2349.

§ 22-2512. Subornation of perjury.

Cited in In re Fogel, App. D.C., 679 A.2d 1052 (1996).

CHAPTER 26. PRISON BREACH; MISPRISIONS.

§ 22-2601. Escape from institution or officer.

Applicability of section to halfway houses and work release programs.

A defendant's unauthorized failure to return to a halfway house in which he had been confined pending trial in another criminal case constitutes a prison breach as an escape from lawful custody before sentencing. Demus v. United States, App. D.C., 710 A.2d 858 (1998).

CHAPTER 27. PROSTITUTION; PANDERING.

§ 22-2701. Inviting for purposes of prostitution prohibited.

(a) It shall not be lawful for any person to invite, entice, persuade, or address for the purpose of inviting, enticing, or persuading, any person or persons in the District of Columbia for the purpose of prostitution or any other immoral or lewd purpose. The penalties for violation of this section shall be a fine of $500 and no less than one day but no more than 90 days imprisonment for the first offense, a fine of $750 and no less than one day but no more than 135 days imprisonment for the second offense, and a fine of $1,000 and no less than one day but no more than 180 days imprisonment for the third and each subsequent offense. Any person convicted of a violation of this section may be sentenced to community service as an alternative to, but not in addition to, any term of imprisonment authorized by this section.

* * * * *

(May 24, 1996, D.C. Law 11-130, § 3(a), 43 DCR 1570.)

Effect of amendments. — D.C. Law 11-130 rewrote the second sentence in (a).

Emergency act amendments.

For temporary provision, on an emergency basis, making available for a reasonable fee the name, address, date of birth, occupation, and photograph of persons convicted of violation of §§ 22-2701 or 22-2703, see § 2 of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

For temporary amendment of section, see § 3(a) of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

Legislative history of Law 11-130. — Law 11-130, the "Safe Streets Anti-Prostitution Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-439, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-237 and transmitted to both Houses of Congress for its review. D.C. Law 11-130 became effective on May 24, 1996.

Prosecutions under section to be made in name of United States. — This section is not a penal statute in the nature of a police or municipal regulation but is a criminal statute so that prosecutions under it are to be conducted in the name of the United States. In re Monaghan, App. D.C., 690 A.2d 476 (1997).

Seizure of motor vehicles. — Seizure of motor vehicles in which defendants were arrested for sexual solicitation was improper because: (1) use of the property in the offense was not deliberate or planned but merely incidental and fortuitous; (2) use of the motor vehicle was not important or necessary to success of the crime but simply provided a convenient location in which the defendants engaged in the unlawful speech; (3) extent of the temporal and spatial use of the motor vehicles in the offense was limited; (4) use of the motor vehicles in the offense was, as was the offense itself, an isolated event; and (5) defendants did not acquire or maintain the property for purpose of facilitating violation of subsection (a) of this section. United States v. Esparza, 124 WLR 1553 (Super. Ct. 1996).

Cited in One 1995 Toyota Pick-Up Truck v. District of Columbia, App. D.C., 718 A.2d 558 (1998).

§ 22-2703. Suspension of sentence; conditions; enforcement.

The court may impose conditions upon any person found guilty under § 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include an order to stay away from the area within which the offense or offenses occurred, submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 15, 1935, 49 Stat. 651, ch. 546, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 22-2703; May 24, 1996, D.C. Law 11-130, § 3(b), 43 DCR 1570.)

Effect of amendments. — D.C. Law 11-130 inserted "an order to stay away from the area within which the offense or offenses occurred" in the second sentence in (a).

Emergency act amendments. — For temporary amendment of section, see § 3(b) of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

For temporary addition of § 2703a, see § 12 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

Legislative history of Law 11-130. — See note to § 22-2701.

§ 22-2705. Pandering; inducing or compelling an individual to engage in prostitution.

* * * * *

(June 25, 1910, 36 Stat. 833; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 1; 1973 Ed., § 22-2705; May 21, 1994, D.C. Law 10-119, § 12(a), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 3, 43 DCR 528.)

Effect of amendments.

D.C. Law 11-119 validated a previously made technical correction.

Legislative history of Law 11-119. — Law 11-119, the "Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Editor's notes. — D.C. Act 11-198 which affected this section as set out in the 1996 Replacement volume became Law 11-119, effective May 17, 1996. The historical citation for this section and notes relating to D.C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

§ 22-2708. Causing spouse to live in prostitution.

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, a spouse in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one year nor more than 10 years. (June 25, 1910, 36 Stat. 833, ch. 404, § 4; 1973 Ed., § 22-2708; May 21, 1994, D.C. Law 10-119, § 12(d), 41 DCR 1639; June 3, 1997, D.C. Law 11-275, § 6, 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-275 inserted "year" following "less than one" near the end.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 22-2709. Detaining an individual in disorderly house for debt there contracted.

Any person or persons who attempt to detain any individual in a disorderly house or house of prostitution because of any debt or debts such individual has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one year nor more than 5 years. (June 25, 1910, 36 Stat. 833, ch. 404, § 5; 1973 Ed., § 22-2709; May 21, 1994,

D.C. Law 10-119, § 12(e), 41 DCR 1639; June 3, 1997, D.C. Law 11-275, § 6, 44 DCR 1408.)

Effect of amendments. D.C. Law 11-275 inserted "year" following "less than one" near the end.

Legislative history of Law 11-275. — See note to § 22-2708.

§ 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

(a) Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(b) Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place which is resorted to by persons using controlled substances in violation of Chapter 5 of Title 33, for the purpose of using any of these substances or for the purpose of keeping or selling any of these substances in violation of Chapter 5 of Title 33, is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, and contents thereof, are also declared a nuisance and disorderly house, and shall be enjoined and abated as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 1; 1973 Ed., § 22-2713; June 19, 1998, D.C. Law 12-127, § 2(a), 45 DCR 1304.)

Cross references. For temporary and permanent provisions allowing the United States Attorney for the District of Columbia, the Corporation Counsel for the District of Columbia, or any community-based organization to file an action in the Superior Court of the District of Columbia to abate, enjoin, and prevent a drug-related nuisance, where there is reason to believe that a drug-related nuisance exists, see §§ 45-3301 to 45-3314 of the D.C. Code, and notes thereto.

Effect of amendments. — D.C. Law 12-127 added (b).

Legislative history of Law 12-127. — Law 12-127, the "Drug House Abatement Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-141, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-261 and transmitted to both Houses of Congress for its review. D.C. Law 12-127 became effective on June 19, 1998.

Abatement. — Section 22-2717 does not limit the abatement remedy exclusively to premises occupied for lewdness, assignation, or prostitution; it is appropriate for any disorderly house nuisance, provided that the existence of such nuisances are established in a criminal proceeding. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 22-2714. Abatement of nuisance under § 22-2713 by injunction — Temporary injunction.

Whenever a nuisance is kept, maintained, or exists, as defined in § 22-2713, the United States Attorney for the District of Columbia, the Attorney General of the United States, the Corporation Counsel of the District of Columbia, or any citizen of the District of Columbia, may maintain an action in equity in the

name of the United States of America or in the name of the District of Columbia, upon the relation of such United States Attorney for the District of Columbia, the Attorney General of the United States, the Corporation Counsel of the District of Columbia, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. (Feb. 7, 1914, 38 Stat. 280, ch. 16, § 2; 1973 Ed., § 22-2714; June 19, 1998, D.C. Law 12-127, § 2(b), 45 DCR 1304.)

Cross references. — For temporary and permanent provisions allowing the United States Attorney for the District of Columbia, the Corporation Counsel for the District of Columbia, or any community-based organization to file an action in the Superior Court of the District of Columbia to abate, enjoin, and prevent a drug-related nuisance, where there is reason to believe that a drug-related nuisance exists, see §§ 45-3301 to 45-3314 of the D.C. Code, and notes thereto.

Effect of amendments. — D.C. Law 12-127 rewrote the first sentence.

Legislative history of Law 12-127. — Law 12-127, the "Drug House Abatement Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-141, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-261 and transmitted to both Houses of Congress for its review. D.C. Law 12-127 became effective on June 19, 1998.

§ 22-2717. Order of abatement; sale of property; entry of closed premises punishable as contempt.

District Court has jurisdiction to enter an Order of Abatement. — Where defendant is found guilty of various offenses under both federal and District law, including keeping a disorderly house, the district court properly has jurisdiction to enter the mandatory order of abatement under this section. United States v. Wade, 152 F.3d 969 (D.C. Cir. 1998).

Order of abatement only applicable to cases involving the exploitation of sex. — A conviction under § 22-2722 prohibiting the keeping of a house found to be disorderly for reasons unrelated to the exploitation of sex will subject the defendant to fines and imprisonment, but not to an abatement order under this section; thus an abatement order was improper when imposed against defendants who were using the residence to sell drugs. United States v. Wade, 152 F.3d 969 (D.C. Cir. 1998).

Non-defendant owner may contest abatement. — An owner of the subject real property, even if not a defendant in the underlying criminal case, does have the ability to contest an abatement order entered pursuant to § 22-2722. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

House deemed nuisance following conviction under § 22-2722.

Defendants' pleas of guilty to keeping a disorderly house demonstrated in a criminal proceeding the existence of a nuisance that the court was compelled to abate. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

This section does not limit the abatement remedy exclusively to premises occupied for lewdness, assignation, or prostitution; it is appropriate for any disorderly house nuisance, provided that the existence of such nuisances

are established in a criminal proceeding. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

The existence of a complaining citizenry is a crucial factor in determining whether a property constitutes an affirmative public disturbance such that the property may be abated as a disorderly house. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 22-2720. Tax for maintaining such nuisance.

Cited in United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 22-2722. Keeping bawdy or disorderly houses.

Order of abatement only applicable to cases involving the exploitation of sex. — A conviction under this section's prohibition on the keeping of a house found to be disorderly for reasons unrelated to the exploitation of sex will subject the defendant to fines and imprisonment, but not to a § 2717 abatement order; thus an abatement order was improper when imposed against defendants who were using the residence to sell drugs. United States v. Wade, 152 F.3d 969 (D.C. Cir. 1998).

Two means by which to show existence of disorderly house nusiance. — There are two means by which a court or other trier of fact may conclude that a disorderly house nuisance exists: (1) if the property affirmatively disturbs the public and/or is openly vexatious; or in the alternative, (2) if the property is inherently considered to be a nuisance by the nature of the conduct transpiring therein, whether or not the property is affirmatively bothersome. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

Affirmative public disturbance. — The existence of a complaining citizenry is a crucial factor in determining whether a property constitutes an affirmative public disturbance such that the property may be a disorderly house. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

Abatement. — Defendants' pleas of guilty to keeping a disorderly house demonstrated in a criminal proceeding the existence of a nuisance that the court was compelled to abate. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

Section 22-2717 does not limit the abatement remedy exclusively to premises occupied for lewdness, assignation, or prostitution; it is appropriate for any disorderly house nuisance, provided that the existence of such nuisances are established in a criminal proceeding. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

Non-defendant owner may contest abatement. — An owner of the subject real property, even if not a defendant in the underlying criminal case, does have the ability to contest an abatement order entered pursuant to this section. United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 22-2723. Property subject to seizure and forfeiture.

* * * * *

(a-1)(1) A lien in favor of the District of Columbia is hereby created in an amount equal to the costs of towing, storing, and administrative processing of a conveyance seized and subject to forfeiture pursuant to this act.

(2) The Mayor, or his or her designee, shall establish a reasonable cost for the towing, storing, and administrative processing of seized conveyances.

(3) The Corporation Counsel of the District of Columbia, or his or her designee, may agree to release a lien by stipulation with the registered owner or lienholder of a seized conveyance.

* * * * *

(Aug. 15, 1935, 49 Stat. 651, ch. 546, § 5, as added May 7, 1993, D.C. Law 9-267, § 2, 39 DCR 5684; May 24, 1996, D.C. Law 11-130, § 3(c), 43 DCR 1570.)

Effect of amendments. — D.C. Law 11-130 inserted (a-1).

Emergency act amendments.

For temporary amendment of section, see § 3(c) of the Safe Streets Anti-Prostitution Emergency Amendment Act of 1996 (D.C. Act 11-252, April 15, 1996, 43 DCR 2139).

Legislative history of Law 11-130. — See note to § 22-2701.

References in text. — "This act," referred to in the introductory language of (a)(1), (a)(1)(A), (a)(2), and (a-1)(1), is an act for the suppression of prostitution in the District of Columbia, approved August 15, 1935, Ch. 546 (49 Stat. 651), which is codified as §§ 22-2701, 22-2703, and this section.

Editor's notes. — The full historical citation for this section is set out to correct an error appearing in the bound volume.

Constitutionality. — The U.S. Constitution prevents utilization of civil forfeiture as a penalty for the commission of an offense where the value of the property forfeited stands in gross disproportion to the gravity of the offense. One 1995 Toyota Pick-Up Truck v. District of Columbia, App. D.C., 718 A.2d 558 (1998).

Forfeiture statute comes within protection of Excessive Fines Clause. — The legislative history of this statute, coupled with other factors including that innocent owners are exempted from forfeiture and that forfeiture is tied directly to the commission of crime, compels the conclusion that the statute has at least some punitive aspect and, as such, comes within the protection of the Excessive Fines Clause. One 1995 Toyota Pick-Up Truck v. District of Columbia, App. D.C., 718 A.2d 558 (1998).

Forfeiture is punishment. — Forfeiture of truck constitutes, at least in part, punishment for conviction of sexual solicitation and is therefore a fine subject to Eighth Amendment scrutiny. One 1995 Toyota Pick-Up Truck v. District of Columbia, App. D.C., 718 A.2d 558 (1998).

Motor vehicles used for sexual solicitation. — Seizure of motor vehicles in which defendants were arrested for sexual solicitation was improper because: (1) use of the property in the offense was not deliberate or planned but merely incidental and fortuitous; (2) use of the motor vehicle was not important or necessary to success of the crime but simply provided a convenient location in which the defendants engaged in the unlawful speech; (3) extent of the temporal and spatial use of the motor vehicles in the offense was limited; (4) use of the motor vehicles in the offense was, as was the offense itself, an isolated event; and (5) defendants did not acquire or maintain the property for purpose of facilitating violation of § 22-2701(a). United States v. Esparza, 124 WLR 1553 (Super. Ct. 1996).

Forfeitures held improper. — Forfeitures of defendants' motor vehicles under this section constituted an excessive fine prohibited by the Eighth Amendment of the United States Constitution, violated the Excessive Fines Clause on proportionality grounds, and subjected the defendants to punishment for the same offense twice in violation of the Double Jeopardy Clause of the Fifth Amendment. United States v. Esparza, 124 WLR 1553 (Super. Ct. 1996).

The forfeiture of a truck valued at $15,500 following the conviction of sexual solicitation for which defendant received a fine of $150 violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution One 1995 Toyota Pick-Up Truck v. District of Columbia, App. D.C., 718 A.2d 558 (1998).

CHAPTER 29. ROBBERY.

§ 22-2901. Robbery.

I. GENERAL CONSIDERATION.

A. In General.

Cited in Womack v. United States, App. D.C., 673 A.2d 603 (1996); Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); In re J.E.H., App. D.C., 689 A.2d 528 (1996); United States v. Hunter, App. D.C., 692 A.2d 1370 (1997); United States v. Jackson, 113 F.3d 249 (D.C. Cir. 1997), cert. denied, — U.S. —, 118 S. Ct. 252, 139 L. Ed. 2d 180 (1997); Williams v. United States, App. D.C., 696 A.2d 1085 (1997); Allen v. United States, App. D.C., 697 A.2d 1 (1997); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Prophet v. United States, App. D.C., 707 A.2d 775 (1998); Dobson v. United States, App. D.C., 711 A.2d 78 (1998); Page v. United States, App. D.C., 715 A.2d 890 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998).

B. Other Offenses Distinguished.

Armed robbery and armed carjacking convictions do not merge. — The crimes of armed robbery and armed carjacking each require proof of a factual element that the other does not, and thus they do not merge. Pixley v. United States, App. D.C., 692 A.2d 438 (1997).

II. ELEMENTS.

B. Possession.

Evidence sufficient to establish possessory element.

Sufficient evidence of "taking" to support a conviction of armed robbery shown even though defendant only held the victim's property for a brief period of time and none of the property was removed from the scene. Lattimore v. United States, App. D.C., 684 A.2d 357 (1996).

Where defendants ordered the victims to throw their money on the floor under clear threat of violence, and the victims complied, this was enough to demonstrate both a violent taking of the property by depriving the victims of its use and appellants' constructive control over the property to the detriment of its owners. Newman v. United States, App. D.C., 705 A.2d 246 (1997).

Victims throwing their money on the floor at the direction of defendants satisfied both the taking and the asportation requirements, even though the defendants never touched the money; defendants exercised constructive possession through their ability to exercise control and to guide its destiny. Newman v. United States, App. D.C., 705 A.2d 246 (1997).

III. PROCEDURE.

E. Evidence.

Evidence insufficient to sustain conviction.

Evidence presented was insufficient to prove beyond a reasonable doubt that defendants were guilty of either robbery or robbery of a senior citizen where there was no direct evidence that defendants took wallets from the immediate actual possession of victims or their person or that a pickpocketing even took place, and where no expert testimony was presented as to methods used by pickpockets to remove wallets from clothing of individuals, or amount of force necessary to pick a pocket. Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

G. Verdict.

Defendant cannot be convicted on multiple counts for unitary transaction.

Where the initial series of offenses committed against victim, which included his being punched in the face, urinated on, and having his pockets searched and emptied, occurred in rapid succession, the entire incident constituted one single assault rather than two separate assaults, the two separate guilty verdicts were redundant, and the simple assault offense merged into the assault with intent to rob. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

§ 22-2902. Attempt to commit robbery.

Evidence sufficient to sustain conviction.

The evidence of intent to rob one victim at one location was sufficient to support the attempted robbery of another victim moments later at a separate location and, consequently, was a sufficient predicate for the felony murder of the second victim. Long v. United States, App. D.C., 687 A.2d 1331 (1996).

Cited in Lattimore v. United States, App. D.C., 684 A.2d 357 (1996); Pixley v. United States, App. D.C., 692 A.2d 438 (1997); United States v. Hunter, App. D.C., 692 A.2d 1370 (1997); Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

§ 22-2903. Carjacking.

Armed robbery and armed carjacking convictions do not merge. — The crimes of armed robbery and armed carjacking each require proof of a factual element that the other does not, and thus they do not merge. Pixley v. United States, App. D.C., 692 A.2d 438 (1997).

Carjacking and unauthorized use of motor vehicle do not merge. — Convictions for carjacking and for unauthorized use of a motor vehicle (UUV) do not merge; carjacking contains elements that UUV does not, most notably the use of force or violence, and UUV contains elements not required for carjacking, such as using, operating, or removing the vehicle from its location. Allen v. United States, App. D.C., 697 A.2d 1 (1997).

CHAPTER 31. TRESPASS; INJURIES TO PROPERTY.

Sec.
22-3112.1. Defacing public or private property.

§ 22-3101. Forcible entry and detainer.

Cited in Bean v. United States, 709 A.2d 85 (D.C. 1998).

§ 22-3102. Unlawful entry on property.

Common areas of apartment building. — The tenant of an apartment in a multi-tenant building has no reasonable expectation of privacy in the common areas of that building, such as hallways, stairwells and basements, and thus would have no standing to challenge either the presence of police officers in these common areas or their seizure of weapons or drugs found in these common areas. Penny v. United States, App. D.C., 694 A.2d 872 (1997).

Jury trial. — Prosecutions under the threats and unlawful entry statutes, with their maximum penalties of six months in prison, entitle the petitioners to trial by jury under § 16-705(b). Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

Evidence insufficient to sustain conviction. — Evidence was insufficient to support defendant's conviction for unlawful entry. Bean v. United States, 709 A.2d 85 (D.C. 1998).

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996); United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997); McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996); Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

§ 22-3111. Disorderly conduct in public buildings or grounds; injury to or destruction of United States property.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

§ 22-3112.1. Defacing public or private property.

It shall be unlawful for any person or persons willfully and wantonly to disfigure, cut, chip, or cover, rub with, or otherwise place filth or excrement of any kind; to write, mark, or print obscene or indecent figures representing obscene or objects upon; to write, mark, draw, or paint, without the consent of the owner or proprietor thereof, or, in the case of public property, of the person having charge, custody, or control thereof, any word, sign, or figure upon:

(1) Any property, public or private, building, statue, monument, office, public passenger vehicle, mass transit equipment or facility, dwelling or structure of any kind including those in the course of erection; or

* * * * *

(June 3, 1997, D.C. Law 11-275, § 7, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction in (1).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No.

11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CHAPTER 32. WEAPONS.

§ 22-3201. Definitions.

* * * * *

(h) "Playground," as used in this chapter, means any facility intended for recreation, open to the public, and with any portion of the facility that contains 1 or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(i) "Video arcade," as used in this chapter, means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(j) "Youth center," as used in this chapter, means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities. (July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title V, § 501; 1973 Ed., § 22-3201; Dec. 1, 1982, D.C. Law 4-164, § 601(e), 29 DCR 3976; July 28, 1989, D.C. Law 8-19, § 3(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(a), 37 DCR 24; Aug. 18, 1994, D.C. Law 10-150, § 3(a), 41 DCR 2594; Aug. 20, 1994, D.C. Law 10-151, § 109, 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(c), 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 4, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 8, 44 DCR 1408.)

Cross references.

As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Effect of amendments.

D.C. Law 11-119 validated a previously made change in (j).

D.C. Law 11-275 validated previously made stylistic corrections in (h), (i), and (j).

Legislative history of Law 11-119. — Law 11-119, the "Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Editor's notes. — D.C. Act 11-198, which affected this section as set out in the 1996 Replacement Volume, became Law 11-119, effective May 17, 1996. Notes relating to D.C. Law 11-119 have been set out to reflect the law number and effective date of D.C. Law 11-119.

Assault on police officer as crime of violence. — Even though assault on a police officer is not one of the crimes of violence enumerated in subsection (f), it would defy reason and common sense not to include assault on a police officer among the crimes listed in subsection (f). Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996).

Certain handguns held within definition of "machine gun." — A Metropolitan Police Department "Glock 17" handgun containing a magazine loaded with seventeen rounds of ammunition was a machine gun within the definition of subsection (c) of this section and § 6-2302(10). Turner v. United States, App. D.C., 684 A.2d 313 (1996).

Cited in Brown v. United States, App. D.C., 691 A.2d 1167 (1997).

§ 22-3202. Additional penalty for committing crime when armed.

Cross references.

As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Mere availability of weapon required. — The penalty enhancement permitted by this section does not require the use of or the intent to use a weapon in the commission of a robbery; instead the phrase "armed with or having readily available" requires mere availability of a weapon. Jamison v. United States, App. D.C., 670 A.2d 373 (1996).

Evidence sufficient to show that defendant had "readily available," etc.

Although the court has not yet defined the "outer limits" of the phrase "readily available" found in this section, an operable pistol found in a dresser drawer, just a few feet away from defendants as they jointly engaged in a series of drug transactions, met the definition of "readily available" such that defendants could be found guilty of possession of cocaine while armed with intent to distribute it under § 33-541(a)(1). Guishard v. United States, App. D.C., 669 A.2d 1306 (1995).

Ammunition charge severable from murder charge. — Introduction of evidence of murders committed with a .38 caliber weapon in a separate trial on illegal possession of .38 caliber ammunition would have created an extreme risk of prejudice no matter what instructions the judge gave regarding the limited use of evidence; thus ammunition charge should have been severed from murder charges. Bright v. United States, App. D.C., 698 A.2d 450 (1997).

Simple assault and assault with intent to rob merged. — Where the initial series of offenses committed against victim, which included his being punched in the face, urinated on, and having his pockets searched and emptied, occurred in rapid succession, the entire incident constituted one single assault rather than two separate assaults, the separate guilty verdicts were redundant, and the simple assault offense merged into the assault with intent to rob. In re T.H.B., App. D.C., 670 A.2d 895 (1996).

Relevant evidence.

Evidence of .38 caliber ammunition found in defendant's possession five days after murders were committed with a .38 caliber weapon was direct and substantial proof that five days earlier defendant was the gunman who had fired the .38 caliber bullets into the victims; thus, the evidence would have been admissible in a separate trial concerning the murders. Bright v. United States, App. D.C., 698 A.2d 450 (1997).

Concepts of "when armed with" and "having readily available" are interchangeable for purposes of the discretionary maximum provision of (a). No legal consequence flows from a jury's finding one rather than the other; ready availability is a surrogate for actual physical possession. Johnson v. United States, App. D.C., 686 A.2d 200 (1996).

Actual physical possession is necessary. — The phrase "while armed with" under subdivision (a)(1) means actual physical possession of the pistol or other firearm, and person who keeps loaded gun inches from the drugs he twice retrieved from the car floor is not in actual physical possession. Johnson v. United States, App. D.C., 686 A.2d 200 (1996).

No ineffective assistance of counsel found. — No prejudice found where trial counsel incorrectly advised defendant that the charge of voluntary manslaughter carried a five-year mandatory minimum term of incarceration due to the armed element. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Evidence sufficient to sustain conviction.

From all the evidence, most significantly from the fact that defendant furnished the murder weapon to the murderer, a jury could readily have found that she aided and abetted the murder. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

Evidence was sufficient to support conviction for assault with intent to rob while armed, attempted robbery while armed, and felony murder while armed. Long v. United States, App. D.C., 687 A.2d 1331 (1996).

Evidence sufficient.

In accord with bound volume. Gryce v. Lavine, App. D.C., 675 A.2d 67 (1996).

There was sufficient evidence of mayhem while armed, etc.

Identification evidence was sufficient to support convictions for assault with intent to kill while armed and mayhem while armed. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Evidence insufficient to sustain conviction.

Evidence was insufficient to sustain the charge that the defendant possessed drugs with intent to distribute while armed with a firearm. Brown v. United States, App. D.C., 691 A.2d 1167 (1997).

Evidence sufficient to establish specific intent.

Evidence showing the defendant's interaction with a co-defendant on the sidewalk in front of the house was sufficient to prove that the defendant constructively possessed drugs found in the co-defendant's knapsack inside the house. Brown v. United States, App. D.C., 691 A.2d 1167 (1997).

Constructive possession of drugs upheld. — Evidence was sufficient to prove that the defendant, while on the sidewalk in front of the house, constructively possessed the drugs and gun found in the bedroom. Brown v. United States, App. D.C., 691 A.2d 1167 (1997).

Sentencing where aggravating factors present. — The prosecutor proved beyond a reasonable doubt the presence of aggravating factors warranting imposition of a sentence of life imprisonment without the possibility of parole. Henderson v. United States, App. D.C., 678 A.2d 20 (1996).

Mandatory minimum sentence not warranted.

Since there was no evidence from which the jury fairly could find beyond a reasonable doubt that defendant had the gun on his person while possessing the drugs with intent to distribute, his mandatory minimum sentence under subdivision (a)(1) was vacated. Johnson v. United States, App. D.C., 686 A.2d 200 (1996).

Jury instructions for aiding and abetting. — Standard aiding and abetting instruction which defendant alleged to be "imprecise" and ambiguous because the alleged act of aiding and abetting was itself a crime, namely the possession of a pistol, was upheld where the court found that the jury could not have been confused by the instruction. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

Jury instruction on use of weapon in self-defense. — The trial court did not err in refusing to give the defendant's proffered instruction regarding use of a weapon in self-defense where the court's instructions conveyed that the defendant was entitled to use a weapon in self-defense despite unlawful possession. Stewart v. United States, App. D.C., 687 A.2d 576 (1996).

Cited in Womack v. United States, App. D.C., 673 A.2d 603 (1996); Partlow v. United States, App. D.C., 673 A.2d 642 (1996); Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996); Shuler v. United States, App. D.C., 677 A.2d 1014 (1996); United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997); Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); Veney v. United States, App. D.C., 681 A.2d 428 (1996); Lyons v. United States, App. D.C., 683 A.2d 1066 (1996); Brown v. United States, App. D.C., 683 A.2d 118 (1996); Johnson v. United States, App. D.C., 683 A.2d 1087 (1996); Gethers v. United States, App. D.C., 684 A.2d 1266 (1996), cert. denied, 520 U.S. 1180, 117 S. Ct. 1458, 137 L. Ed. 2d 562 (1997); Lattimore v. United States, App. D.C., 684 A.2d 357 (1996); Powell v. United States, App. D.C., 684 A.2d 373 (1996); Williams v. United States, App. D.C., 686 A.2d 552 (1996); Thomas v. United States, App. D.C., 685 A.2d 745 (1996); Scales v. United States, App. D.C., 687 A.2d 927 (1996); Smith v. United States, App. D.C., 687 A.2d 1356 (1996); In re J.E.H., App. D.C., 689 A.2d 528 (1996); Patton v. United States, App. D.C., 688 A.2d 408 (1997); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Freeman v. United States, App. D.C., 689 A.2d 575 (1997); Wilson v. United States, App. D.C., 691 A.2d 1157 (1997); Pixley v. United States, App. D.C., 692 A.2d 438 (1997); Parker v. United States, App. D.C., 692 A.2d 913 (1997); Willis v. United States, App. D.C., 692 A.2d 1380 (1997); Williams v. United States, App. D.C., 696 A.2d 1085 (1997); United States v. Thomas, 114 F.3d 228 (D.C. Cir. 1997); Reaves v. United States, App. D.C., 694 A.2d 52 (1997); Payne v. United States, App. D.C., 697 A.2d 1229 (1997); United States v. Williams, App. D.C., 697 A.2d 1244 (1997); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Pettiford v. United States, App. D.C., 700 A.2d 207 (1997); Davis v. United States, App. D.C., 700 A.2d 229 (1997); United States v. Seals, 130 F.3d 451 (D.C. Cir. 1997); Johnson v. United States, App. D.C., 701 A.2d 1085 (1997); Russell v. United States, App. D.C., 701 A.2d 1093 (1997); Boykins v. United States, App. D.C., 702 A.2d 1242 (1997); Graham v. United States, App. D.C., 703 A.2d 825 (1997); Newman v. United States, App. D.C., 705 A.2d 246 (1997); McClellan v. United States, App. D.C., 706 A.2d 542 (1997), cert. denied, — U.S. —, 118 S. Ct. 2073, 141 L. Ed. 2d 149 (1998); Prophet v. United States, App. D.C., 707 A.2d 775 (1998); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Peyton v. United States, 709 A.2d 65 (D.C. 1998); Little v. United States, 709 A.2d 708 (D.C. 1998); Wilson v. United States, App. D.C., 711 A.2d 75 (1998); Dobson v. United States, App. D.C., 711 A.2d 78 (1998); Thomas v.

United States, App. D.C., 715 A.2d 121 (1998); United States v. Wilson, 160 F.3d 732 (D.C. Cir. 1998); Southall v. United States, App. D.C., 716 A.2d 183 (1998); Bragdon v. United States, App. D.C., 717 A.2d 878 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); Bolanos v. United States, App. D.C., 718 A.2d 532 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998); Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

§ 22-3203. Unlawful possession of pistol.

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Emergency act amendments. — For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

Seizure and forfeiture of conveyances used in firearms offenses. — Section 2(b) of D.C. Law 11-273 provided for the forfeiture and seizure of any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 6-2302, or in any manner use to facilitate a violation of §§ 22-3203 and 22-3204.

Refusal to strike juror denied defendant right to impartial jury. — Even though evidence was sufficient to convict defendant on the charges of first degree burglary while armed, assault with a dangerous weapon, possession of a firearm during a crime of violence, carrying a pistol without a license, and simple assault, refusal to grant defense counsel's request to strike a juror denied the defendant the right to trial by an impartial jury and required a new trial. Hughes v. United States, App. D.C., 689 A.2d 1206 (1997).

Cited in Goodall v. United States, App. D.C., 686 A.2d 178 (1996).

§ 22-3204. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

I. GENERAL CONSIDERATION.

Emergency act amendments.

For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

Seizure and forfeiture of conveyances used in firearms offenses. — Section 2(b) of D.C. Law 11-273 provided for the forfeiture and seizure of any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 6-2302, or in any manner use to facilitate a violation of §§ 22-3203 and 22-3204.

Assault on police officer as crime of violence. — Even though assault on a police officer is not one of the crimes of violence enumerated in § 22-3201(f), it would defy reason and common sense not to include assault on a police officer among the crimes listed in § 22-3201(f). Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996).

Refusal to strike juror denied defendant's right to impartial jury. — Even though evidence was sufficient to convict defendant on the charges of first degree burglary while armed, assault with a dangerous weapon, possession of a firearm during a crime of violence, carrying a pistol without a license, and simple assault, refusal to grant defense counsel's request to strike a juror denied the defendant the right to trial by an impartial jury and required a new trial. Hughes v. United States, App. D.C., 689 A.2d 1206 (1997).

Cited in Womack v. United States, App. D.C., 673 A.2d 603 (1996); Partlow v. United States, App. D.C., 673 A.2d 642 (1996); Oliver v. United States, App. D.C., 682 A.2d 186 (1996); Brown v. United States, App. D.C., 683 A.2d 118 (1996); Lyons v. United States, App. D.C., 683 A.2d 1066 (1996); Johnson v. United States, App. D.C., 683 A.2d 1087 (1996); Turner v. United States, App. D.C., 684 A.2d 313 (1996); Lattimore v. United States, App. D.C., 684 A.2d 357 (1996); Johnson v. United States, App. D.C., 686 A.2d 200 (1996); Heard v. United States, App. D.C., 686 A.2d 1026 (1996); Thomas v. United States, App. D.C., 685 A.2d 745 (1996); Stewart v. United States, App. D.C., 687 A.2d 576 (1996); Smith v. United States, App. D.C., 687 A.2d 581 (1996); Scales v. United States, App. D.C., 687 A.2d 927 (1996); Long v. United States, App. D.C., 687 A.2d 1331 (1996); Smith v. United States, App. D.C., 687 A.2d 1356 (1996); In re J.E.H., App. D.C., 689 A.2d 528 (1996); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Wilson v. United States, App. D.C., 691 A.2d 1157 (1997); Brown v. United States, App. D.C., 691 A.2d 1167 (1997); Pixley v. United States, App. D.C., 692 A.2d 438 (1997); Parker v. United States, App.

D.C., 692 A.2d 913 (1997); Willis v. United States, App. D.C., 692 A.2d 1380 (1997); United States v. Barrett, 111 F.3d 947 (D.C. Cir. 1997), cert. denied, — U.S. —, 118 S. Ct. 176, 139 L. Ed. 2d 117 (1997); In re D.A.J., App. D.C., 694 A.2d 860 (1997); Williams v. United States, App. D.C., 696 A.2d 1085 (1997); United States v. Thomas, 114 F.3d 228 (D.C. Cir. 1997); Reaves v. United States, App. D.C., 694 A.2d 52 (1997); Payne v. United States, App. D.C., 697 A.2d 1229 (1997); Bright v. United States, App. D.C., 698 A.2d 450 (1997); Lee v. United States, App. D.C., 699 A.2d 373 (1997); Pettiford v. United States, App. D.C., 700 A.2d 207 (1997); Davis v. United States, App. D.C., 700 A.2d 229 (1997); Johnson v. United States, App. D.C., 701 A.2d 1085 (1997); Boykins v. United States, App. D.C., 702 A.2d 1242 (1997); Tucker v. United States, App. D.C., 704 A.2d 845 (1997); Newman v. United States, App. D.C., 705 A.2d 246 (1997); Littlejohn v. United States, App. D.C., 705 A.2d 1077 (1997); Coates v. United States, App. D.C., 705 A.2d 1100 (1998); McClellan v. United States, App. D.C., 706 A.2d 542 (1997), cert. denied, — U.S. —, 118 S. Ct. 2073, 141 L. Ed. 2d 149 (1998); United States v. Toms, 136 F.3d 176 (D.C. Cir. 1998); Tucker v. United States, 708 A.2d 645 (D.C. 1998); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Peyton v. United States, 709 A.2d 65 (D.C. 1998); Little v. United States, 709 A.2d 708 (D.C. 1998); Wilson v. United States, App. D.C., 711 A.2d 75 (1998); Dobson v. United States, App. D.C., 711 A.2d 78 (1998); Thomas v. United States, App. D.C., 715 A.2d 121 (1998); Bragdon v. United States, App. D.C., 717 A.2d 878 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998); McDaniels v. United States, App. D.C., 718 A.2d 530 (1998); Bolanos v. United States, App. D.C., 718 A.2d 532 (1998); United States v. Bamiduro, App. D.C., 718 A.2d 547 (1998); Green v. United States, App. D.C., 718 A.2d 1042 (1998); James v. United States, App. D.C., 718 A.2d 1083 (1998); In re R.M.C., App. D.C., 719 A.2d 491 (1998); Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

II. ELEMENTS.

A. In General.

Imitation firearms, etc.

The fact that defendant used an imitation weapon during an attack upon the victim did not preclude defendant from being charged under this section for possession of a firearm during a crime of violence. United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997).

Jury had sufficient grounds to convict defendant. — Where it was undisputed that the jury was properly charged on the elements of carrying a pistol without a license under this provision, the jury had to have found that the defendant carried the firearm in order to convict him, and thus the jury had sufficient grounds to convict the defendant on the "carry" prong of 18 U.S.C. § 924(c)(1). United States v. Taylor, 949 F. Supp. 932 (D.D.C. 1997).

B. Possession.

Carrying firearm during or in connection with drug trafficking crime. — Defendant's knowing possession of the handgun at the time of his arrest, and his subsequent conviction for possessing more than five grams of cocaine with intent to distribute, are sufficient to support a conviction for "carrying" a firearm during and in relation to a drug trafficking crime, pursuant to 18 U.S.C. § 924. United States v. Smart, 98 F.3d 1379 (D.C. Cir. 1996), cert. denied, 520 U.S. 1128, 117 S. Ct. 1271, 137 L. Ed. 2d 349 (1997).

Possession by co-conspirator. — Proof of a violation under this section does not require actual possession of a firearm by each co-conspirator or participant. Akins v. United States, App. D.C., 679 A.2d 1017 (1996).

Pistol stored in automobile trunk. — As a matter of law, a pistol stored in the trunk of a vehicle is not being carried "on or about the person." Henderson v. United States, App. D.C., 687 A.2d 918 (1996).

The location of a pistol in a locked trunk presented an "obstacle" to defendant's ready access, and was not convenient of access and within reach; thus, the prosecution failed to prove that the pistol was "on or about" the defendant's person within the meaning of this section. Henderson v. United States, App. D.C., 687 A.2d 918 (1996).

Command to fire establishes constructive possession. — Evidence of violation of subsection (b) and defendant's constructive possession of a gun held by her son was sufficient where defendant ordered the son to shoot the weapon. Smith v. United States, App. D.C., 684 A.2d 307 (1996).

Evidence of proximity is sufficient.

Unlike where a gun is locked in the trunk of an automobile, where gun was found in an open box in rear of ice cream truck and the truck was specifically designed to allow the driver to walk easily to the rear section, the jury could reasonably find that the location of the gun did not present any obstacle denying defendant access to the weapon or placing it beyond his reach. White v. United States, App. D.C., 714 A.2d 115 (1998).

Evidence sufficient to establish that defendant was in constructive possession of gun.

Where testimony of undercover officers established that defendants were operating a drug business out of the rear bedroom of an apartment in which each defendant was a part-time resident and where a search of that apartment revealed papers and bills addressed to the defendants, a gun, and bags of cocaine and

marijuana, the proximity of personal papers, the gun and the contraband to the defendants when they were selling drugs to the undercover officers was sufficient circumstantial evidence linking the defendants to the gun and drugs from which a jury could infer that the defendants had dominion and control or constructive possession of the gun as well as the drugs and other contraband found in the apartment. Guishard v. United States, App. D.C., 669 A.2d 1306 (1995).

Where testimony of officers established that, as police were approaching vehicle, defendant walked to the rear of the ice cream truck and reached into a box where a gun was later found, the jury could reasonably infer that defendant was trying to hide the gun from police, and, therefore, had knowledge of its presence and both the intent and ability to guide its destiny. White v. United States, App. D.C., 714 A.2d 115 (1998).

Constructive possession by itself is not sufficient to sustain conviction; evidence must also prove that weapon was "in such proximity to the person as to be convenient of access and within reach." White v. United States, App. D.C., 714 A.2d 115 (1998).

Verdict inconsistent with possession does not mandate reversal. — Where defendant was convicted of possession of a firearm under subsection (b) of this section (PFCV) and violating § 23-1327, but acquitted of assault with a dangerous weapon under § 22-502 (ADW), then despite the fact that the § 23-1327 offense was not a qualifying predicate for PFCV, and defendant's acquittal of ADW was inconsistent with her PFCV conviction, the conviction was not reversed; inconsistent verdicts by themselves do not mandate reversal. Smith v. United States, App. D.C., 684 A.2d 307 (1996).

C. Without a License.

Within residence. — Deletion of the language which exempted carrying a pistol without a license in a person's residence, inter alia, from the present version of subsection (a), was designed to expand the scope of this section's coverage in its attempt to address the devastating effects the rampant use of pistols is having in the District of Columbia. The consequence of the omission being that carrying a pistol without a license in one's residence is now a violation of this section. United States v. Bigelow, 123 WLR 401 (Super. Ct. 1995).

D. Intent.

General intent crime. — Carrying a pistol without a license is a general intent crime and has no scienter requirement. Bieder v. United States, App. D.C., 707 A.2d 781 (1998).

Innocent possession. — In order to assert a claim of innocent possession, an accused must show not only an absence of criminal purpose, but also that his possession was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement. Bieder v. United States, App. D.C., 707 A.2d 781 (1998).

IV. PROCEDURE.

A. In General.

Severance properly denied. — Motion for severance under Superior Court Criminal Rule 14 was properly denied where evidence supporting the drug offense under § 33-541 was admissible to explain the circumstances of the defendant's arrest on the weapons charge under this section and the evidence of the weapon offense was inextricable a part of the arrest on the drug charge. Holiday v. United States, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

C. Defenses.

1. In General.

Even if someone is shooting at you, you are not allowed to carry a pistol without a license. Goodall v. United States, App. D.C., 686 A.2d 178 (1996).

D. Evidence.

Identification evidence sufficient to support conviction.

Although victim did not identify defendant to the police as the second gunman until 22 days after the shooting, the delay was attributed to the seriousness of victim's wounds and that he was close to death for several days, the evidence was sufficient for a reasonable juror to find defendant guilty beyond a reasonable doubt. Gethers v. United States, App. D.C., 684 A.2d 1266 (1996), cert. denied, 520 U.S. 1180, 117 S. Ct. 1458, 137 L. Ed. 2d 562 (1997).

Evidence sufficient to support "inconsistent" verdicts. — Where defendants were convicted of possession of a firearm during a crime of violence (PFCV), but were acquitted of two armed offenses that could serve as necessary predicates for the PFCV charge, seeming inconsistency in verdicts did not mandate reversal of the conviction where there was little basis for attributing confusion to the jury, where defense counsel agreed with the jury instructions and never requested a clarifying instruction, and where evidence was sufficient to support the PFCV conviction. United States v. Dobyns, App. D.C., 679 A.2d 487 (1996), cert. denied, 520 U.S. 1247, 117 S. Ct. 1859, 137 L. Ed. 2d 1060 (1997).

Evidence sufficient to support conviction.

Evidence that defendant knew that his co-conspirator had a firearm, and that defendant joined the conspiracy to rob the victim while the co-conspirator was armed with the firearm, was sufficient to support defandant's conviction for possession of a firearm during the commission

of a violent crime. Akins v. United States, App. D.C., 679 A.2d 1017 (1996).

In accord with last paragraph in bound volume. McGriff v. United States, App. D.C., 705 A.2d 282 (1997), cert. denied, — U.S. —, 118 S. Ct. 1542, 140 L. Ed. 2d 690 (1998).

E. Instructions.

Use of firearm. — Where the jury found that appellant "carried" a firearm within the meaning of subsection (a) of this section, the jury must necessarily have found the appellant "carried" a firearm within the meaning of 18 U.S.C. § 924(c)(1), and thus the error in the instruction regarding the meaning of the word "use" as including active or constructive possession during the commission of the offense was harmless. United States v. Smart, 98 F.3d 1379 (D.C. Cir. 1996), cert. denied, 520 U.S. 1128, 117 S. Ct. 1271, 137 L. Ed. 2d 349 (1997).

Charge adequate.

Standard aiding and abetting instruction which defendant alleged to be "imprecise" and ambiguous because the alleged act of aiding and abetting was itself a crime, namely the possession of a pistol, was upheld where the court found that the jury could not have been confused by the instruction. Lyons v. United States, App. D.C., 683 A.2d 1080 (1996).

F. Sentencing.

1. In General.

Sentences generally. — If a person has not previously been convicted of a violation of this section or of a felony, the violation is subject to the misdemeanor penalties of § 22-3215. On the other hand, if a person has a prior conviction for a violation of this section or has a felony conviction, the person is subject to the imposition of a felony sentence pursuant to paragraph (a)(2) of this section. United States v. Bigelow, 123 WLR 401 (Super. Ct. 1995).

§ 22-3205. Exceptions to § 22-3204.

(a) The provisions of § 22-3204 shall not apply to marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law-enforcement officers, including criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties, or to members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his or her possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another.

* * * * *

(Mar. 26, 1999, D.C. Law 12-190, § 3, 45 DCR 7814.)

Effect of amendments.

D.C. Law 12-190 inserted "including criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties" near the beginning of (a).

Temporary amendment of section. — Section 3 of D.C. Law 12-177 inserted "including criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties" near the beginning of (a).

Section 5(b) of D.C. Law 12-177 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Office of the Inspector General Law Enforcement Powers Amendment Act of 1998, whichever occurs first.

Emergency act amendments. — For tem-

porary amendment of section, see § 3 of the Office of the Inspector General Law Enforcement Powers Emergency Amendment Act of 1998 (D.C. Act 12-394, July 4, 1998, 45 DCR 4645), § 3 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-463, October 28, 1998, 45 DCR 7818), and § 3 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-3, February 8, 1999, 46 DCR 2288).

Legislative history of Law 12-177. — Law 12-177, the "Office of the Inspector General Law Enforcement Powers Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-676. The Bill was adopted on first and second readings on June 2, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-419 and transmitted to both Houses of Congress for its review. D.C. Law 12-419 became effective on March 26, 1999.

Legislative history of Law 12-190. — Law 12-190, the "Office of the Inspector General Law Enforcement Powers Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-622, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-461 and transmitted to both Houses of Congress for its review. D.C. Law 12-190 became effective on March 26, 1999.

Cited in United States v. Barrett, 111 F.3d 947 (D.C. Cir. 1997), cert. denied, — U.S. —, 118 S. Ct. 176, 139 L. Ed. 2d 117 (1997).

§ 22-3210. Licenses of weapons dealers; records; by whom granted; conditions.

(a) The Mayor of the District of Columbia may, in his or her discretion, grant licenses and may prescribe the form thereof, effective for not more than 1 year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in § 22-3209, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

(3) No pistol shall be sold: (A) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by § 22-3203 to possess a pistol or is under the age of 21 years; and (B) unless the purchaser is personally known to the seller or shall present clear evidence of his or her identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-3214 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia.

(4) A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the Mayor, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

(5) A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Mayor of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the

purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that the purchaser is not forbidden by § 22-3203 to possess a pistol. One copy of said record shall, within 7 days, be forwarded by mail to the Chief of Police of the District of Columbia and the other copy retained by the seller for 6 years.

(6) No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

(b) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Class A Public Safety endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47 of the District of Columbia Code. (July 8, 1932, 47 Stat. 652, ch. 465, § 10; June 29, 1953, 67 Stat. 94, ch. 159, § 204(f), (g); 1973 Ed., § 22-3210; May 21, 1994, D.C. Law 10-119, § 15(i), 41 DCR 1639; Apr. 20, 1999, D.C. Law 12-261, § 2003(p), 46 DCR 3142.)

Effect of amendments.
D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 22-3214. Possession of certain dangerous weapons prohibited; exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, or metal knuckles, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, however, that machine guns, or sawed-off shotguns, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-3210.

* * * * *

(_____, 1999, D.C. Law 12-(Act 12-613), § 6, 46 DCR 1328.)

Effect of amendments.
D.C. Law 12-(D.C. Law 12-613) inserted "including any designated civilian employee of the Metropolitan Police Department" in (a).

Temporary amendment of section. — Section 6 of D.C. Law 12-(Act 12-492) inserted "including any designated civilian employee of the Metropolitan Police Department" in (a).

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 6 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 6 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 6 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Conviction under this section does not merge with possession of unregistered firearm. -- Convictions for possession of an unregistered firearm under § 6-2311(a) and possession of a prohibited weapon under this section do not merge where defendant possesses a machine gun, which cannot be registered under § 6-2312; possession of a prohibited weapon requires proof of a fact that the unregistered firearm offense does not. Turner v. United States, App. D.C., 684 A.2d 313 (1996).

Evidence sufficient to sustain conviction.

Where an AK-47 automatic rifle and its ammunition were on the ground one foot from an open rear door of an automobile from which appellant fled, the appellant owned and was operating the automobile, and appellant ignored marked cruiser's signals until stopping in an unlighted area, the jury could reasonably infer from the size of the weapon that appellant knew it was in the vehicle, and jointly and constructively possessed it with the other occupants. McDaniels v. United States, App. D.C., 718 A.2d 530 (1998).

Cited in Wilson v. United States, App. D.C., 673 A.2d 670 (1996); Oliver v. United States, App. D.C., 682 A.2d 186 (1996); Holiday v. United States, App. D.C., 683 A.2d 61 (1996), cert. denied, 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997); Goodall v. United States, App. D.C., 686 A.2d 178 (1996); Mills v. United States, App. D.C., 708 A.2d 1003 (1997); Thomas v. United States, App. D.C., 715 A.2d 121 (1998).

§ 22-3215. Penalties.

Applicability of felony penalties. — If a person has not previously been convicted of a violation of § 22-3204 or of a felony, the violation is subject to the misdemeanor penalties of this section. On the other hand, if a person has a prior conviction for a violation of § 22-3204 or has a felony conviction, the person is subject to the imposition of a felony sentence pursuant to § 22-3204(a)(2). United States v. Bigelow, 123 WLR 401 (Super. Ct. 1995).

Cited in Russell v. United States, App. D.C., 701 A.2d 1093 (1997).

§ 22-3217. Dangerous articles; definition; taking and destruction; procedure.

* * * * *

(c) When a police officer, in the course of a lawful arrest or lawful search, or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search, discovers a dangerous article which the officer reasonably believes is a nuisance under subsection (b) of this section the officer

shall take it into his or her possession and surrender it to the Property Clerk of the Metropolitan Police Department.

* * * * *

(e) A person claiming a dangerous article shall be entitled to its possession only if: (1) such person shows, on satisfactory evidence, that such person is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; (2) such person shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer or a designated civilian employee of the Metropolitan Police Department, it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his or her knowledge or consent; and (3) the receipt of possession by the claimant does not cause the article to be a nuisance. A representative is accredited if such person has a power of attorney from the owner.

* * * * *

(_____, 1999, D.C. Law 12-(Act 12-613), § 7, 46 DCR 1328.)

Effect of amendments.

D.C. Law 12-(D.C. Law 12-613) inserted "or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search" in (c); and, in (e), inserted "or a designated civilian employee of the Metropolitan Police Department."

Temporary amendment of section. — Section 7 of D.C. Law 12-(Act 12-492) inserted "or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search" in (c); and, in (e), inserted "or a designated civilian employee of the Metropolitan Police Department."

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 7 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 7 of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — See note to § 22-3214.

Legislative history of Law 12-(D.C. Act 12-613). — See note to § 22-3214.

CHAPTER 33. VAGRANCY.

§ 22-3302. "Vagrants" defined.

The following classes of persons shall be deemed vagrants in the District of Columbia:

* * * * *

(8) All persons who by the common law are vagrants, whether embraced in any of the foregoing classifications or not. (Dec. 17, 1941, 55 Stat. 808, ch. 589, § 1; June 29, 1953, 67 Stat. 97, ch. 159, § 209(b); 1973 Ed., § 22-3302; Nov. 17, 1993, D.C. Law 10-54, § 9, 40 DCR 5450; May 21, 1994, D.C. Law 10-119, § 16(a), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 5, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 9(a), 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-119 validated a previously made change at the end of (7).

D.C. Law 11-275 validated a previously made stylistic correction in (8).

Legislative history of Law 11-119. — Law 11-119, the "Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Editor's notes. — D.C. Act 11-198, which affected this section as set out in the 1996 Replacement Volume, became Law 11-119, effective May 17, 1996. The historical citation for this section and the notes relating to D.C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

§ 22-3304. Penalty; conditions imposed by court.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

§ 22-3306. Right to strike or picket not abrogated.

Nothing in §§ 22-3302 to 22-3305 shall be construed so as to interfere with, or impede or diminish in any way, the right to strike or the right to picket. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 6; 1973 Ed., § 22-3306; June 3, 1997, D.C. Law 11-275, § 9(b), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction.

Legislative history of Law 11-275. — See note to § 22-3302.

CHAPTER 33A. PANHANDLING CONTROL.

§ 22-3311. Definitions.

Cited in McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

§ 22-3312. Prohibited acts.

Constitutionality. — Subsection (b) of this section is a reasonable regulation of begging and is not violative of the First Amendment; it is designed to ensure public safety by prohibit-

ing conduct that may be reasonably expected to disrupt or impede the smooth flow of pedestrian subway traffic within fifteen feet of a subway escalator. McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

The term "at a subway station or stop" is not unconstitutionally vague so as to be violative of the Fifth Amendment. McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

Scope of section. — Subsection (b) of this section is narrow in scope and does not cut off all right to solicit or beg in a non-aggressive manner; nor does it focus only on beggars, but covers all those who seek to obtain "an immediate donation of money or thing of value." McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

§ 22-3313. Permitted activity.

Cited in McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996).

CHAPTER 34. MISCELLANEOUS PROVISIONS.

§ 22-3416. Sale of unwholesome food — Prohibited.

Cited in Washington v. Guest Serv., Inc., App. D.C., 718 A.2d 1071 (1998).

§ 22-3426. Debt adjusting; prohibitions; exceptions; penalties; prosecutions for violations.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

CHAPTER 35. SEXUAL PSYCHOPATHS.

Sec.
22-3511. Criminal law unchanged.

§ 22-3511. Criminal law unchanged.

Nothing in §§ 22-3503 to 22-3510 shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia. (June 9, 1948, 62 Stat. 350, ch. 428, title II, § 209; 1973 Ed., § 22-3511; June 3, 1997, D.C. Law 11-275, § 10, 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CHAPTER 36. IMPLEMENTS OF CRIME.

Sec.
22-3601. Possession of implements of crime; penalty.

§ 22-3601. Possession of implements of crime; penalty.

No person shall have in his or her possession in the District any instrument, tool, or implement for picking locks or pockets, with the intent to use such instrument, tool, or implement to commit a crime. Whoever violates this section shall be imprisoned for not more than 180 days and may be fined not more than $1,000, unless the violation occurs after he or she has been convicted in the District of a violation of this section or of a felony, either in the District or another jurisdiction, in which case he or she shall be imprisoned for not less than one year nor more than 5 years. (June 29, 1953, 67 Stat. 97, ch. 159, § 209(a); 1973 Ed., § 22-3601; Aug. 5, 1981, D.C. Law 4-29, § 604(a)(2), 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(g), 28 DCR 4348; May 21, 1994, D.C. Law 10-119, § 9(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 110(b), 41 DCR 2608; June 3, 1997, D.C. Law 11-275, § 11, 44 DCR 1408.)

Cross references.
As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Effect of amendments.
D.C. Law 11-275 validated a previously made stylistic correction.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

CHAPTER 38. THEFT; FRAUD.

Subchapter I. General Provisions.

Sec.
22-3803. Consecutive sentences.

Subchapter II. Theft; Related Offenses.

22-3812. Penalties for theft.

Subchapter III-A. Insurance Fraud.

22-3825.1. Definitions.
22-3825.2. Insurance fraud in the first degree.
22-3825.3. Insurance fraud in the second degree.
22-3825.4. Penalties.
22-3825.5. Restitution.
22-3825.6. Indemnity.
22-3825.7. Practitioners.
22-3825.8. Investigation and report of insurance fraud.
22-3825.9. Insurance fraud prevention and detection.
22-3825.10. Regulations.

Subchapter I. General Provisions.

§ 22-3803. Consecutive sentences.

No person shall be consecutively sentenced for the same act or course of conduct for the following:

* * * * *

(3) Theft and commercial piracy. (Dec. 1, 1982, D.C. Law 4-164, § 103, 29 DCR 3976; June 3, 1997, D.C. Law 11-275, § 12(a), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated previously made technical corrections in the introductory language and in (3).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Subchapter II. Theft; Related Offenses.

§ 22-3811. Theft.

"Deception." — When a theft charge is based on deception, the statutory term "deception" goes beyond the common law definition of false pretenses and includes any misrepresentation as to the future, as well as misrepresentation as to a past or present fact. Cash v. United States, App. D.C., 700 A.2d 1208 (1997).

Evidence of purchase price as indication of value. — Evidence of purchase price of compact discs was not sufficient where there was no other evidence regarding whether they had retained their value since their purchase; evidence regarding purchase price of a stolen article is not sufficient to prove its value at the time of the theft some months later even if it was in almost mint, or very good, condition. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

Value of subject property. — The court has been very strict in requiring affirmative proof of value, especially when the value alleged is close to the line dividing one offense from another. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

The evidence must be sufficient to eliminate the possibility that the jury's verdict was based on surmise or conjecture about the value of the property. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

In a prosecution for first degree theft of an automobile, evidence was sufficient to establish the value of the vehicle where the owner testified as to the price paid for the automobile, and that it was in good working order when it was stolen. Terrell v. United States, App. D.C., 721 A.2d 957 (1998).

Evidence held sufficient.

In accord with first paragraph in the bound volume. Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

Evidence was sufficient to prove that defendant obtained victim's money by deception and that he specifically intended to deprive her of it and keep it for himself when he contracted and accepted payment for home improvements that he did not intend to complete. Cash v. United States, App. D.C., 700 A.2d 1208 (1997).

Cited in In re Hopkins, App. D.C., 677 A.2d 55 (1996); Gilliam v. United States, App. D.C., 707 A.2d 784 (1998).

§ 22-3812. Penalties for theft.

(a) *Theft in the first degree.* — Any person convicted of theft in the first degree shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both, if the value of the property obtained or used is $250 or more.

(b) *Theft in the second degree.* — Any person convicted of theft in the second degree shall be fined not more than $1,000 or imprisoned for not more than 180 days, or both, if the value of the property obtained or used is less than $250. (Dec. 1, 1982, D.C. Law 4-164, § 112, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(a), 41 DCR 2608; June 3, 1997, D.C. Law 11-275, § 12(b), 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-275 validated previously made stylistic and technical corrections in (a) and (b).

Legislative history of Law 11-275. — See note to § 22-3803.

Value of subject property. — The court has

been very strict in requiring affirmative proof of value, especially when the value alleged is close to the line dividing one offense from another. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

The evidence must be sufficient to eliminate the possibility that the jury's verdict was based on surmise or conjecture about the value of the property. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

Evidence of purchase price as indication of value. — Evidence of purchase price of compact discs was not sufficient where there was no other evidence regarding whether they had retained there value since their purchase; evidence regarding purchase price of a stolen article is not sufficient to prove its value at the time of the theft some months later even if it was in almost mint, or very good, condition. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

Cited in Cash v. United States, App. D.C., 700 A.2d 1208 (1997); Gilliam v. United States, App. D.C., 707 A.2d 784 (1998).

§ 22-3813. Shoplifting.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996); United States v. Jackson, 113 F.3d 249 (D.C. Cir. 1997), cert. denied, — U.S. —, 118 S. Ct. 252, 139 L. Ed. 2d 180 (1997).

§ 22-3815. Unauthorized use of motor vehicles.

Merger of offenses.

Convictions for carjacking and for unauthorized use of a motor vehicle (UUV) do not merge; carjacking contains elements that UUV does not, most notably the use of force or violence, and UUV contains elements not required for carjacking, such as using, operating, or removing the vehicle from its location. Allen v. United States, App. D.C., 697 A.2d 1 (1997).

Cited in In re Q.D.G., App. D.C., 706 A.2d 36 (1998).

§ 22-3816. Taking property without right.

Cited in Turner v. Bayly, App. D.C., 673 A.2d 596 (1996).

Subchapter III. Fraud; Related Offenses.

§ 22-3823. Credit card fraud.

Evidence held sufficient to support conviction. — See Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

Subchapter III-A. Insurance Fraud.

§ 22-3825.1. Definitions.

For the purposes of this subchapter, the term:

(1) "Business of insurance" means the writing of insurance or reinsuring the risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

(2) "Commissioner" means the Commissioner of Insurance and Securities Regulation, the Commissioner's designee, or the Department of Insurance and Securities Regulation.

(3) "District" means the District of Columbia.

(4) "Insurance" means a contract or arrangement in which one undertakes to:

(A) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;

(B) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;

(C) Pay an annuity to another; or

(D) Act as a surety.

(5) "Insurance professional" means insurance sales agents or managing general agents, insurance brokers, insurance producers, insurance adjusters, and insurance third party administrators.

(6) "Insurer" means any person who engages in the business of insurance for a fee or indemnifies another against loss, damage, or liability arising from a contingent or unknown event.

(7) "Malice" means an intentional or deliberate infliction of injury, by furnishing or disclosing information with knowledge that the information is false, or furnishing or disclosing information with reckless disregard for a strong likelihood that the information is false and that injury will occur as a result.

(8) "Person" means a natural person, company, corporation, joint stock company, unincorporated association, partnership, professional corporation, trust, or any other entity or combination of the foregoing.

(9) "Practitioner" means a person, licensed to practice a profession or trade in the District, whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds.

(10) "Premium" means the money paid or payable as the consideration for coverage under an insurance policy. (Dec. 1, 1982, D.C. 4-164, § 125a, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — Law 12-273, the "Insurance Fraud Prevention and Detection Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-235, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-595 and transmitted to both Houses of Congress for its review. D.C. Law 12-273 became effective on April 27, 1999.

§ 22-3825.2. Insurance fraud in the first degree.

A person commits the offense of insurance fraud in the first degree if, knowingly and with intent to defraud, that person makes an act or omission concerning any of the following:

(1) Presenting false information or knowingly conceals information regarding a material fact in any of the following transactions:

(A) Application for, rating of, or renewal of an insurance policy or reinsurance contract;

(B) Claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(C) Premiums paid on an insurance policy or reinsurance contract;

(D) Payment made in accordance with the terms of an insurance policy or reinsurance contract;

(E) Application used in a premium finance transaction;

(F) Solicitation for sale of an insurance policy;

(G) Application for a license or certificate of authority filed with the Commissioner or the chief insurance regulatory official of another jurisdiction;

(H) Financial statement or condition of any insurer or reinsurer;

(I) Acquisition, formation, merger, affiliation, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in the District by an insurer or reinsurer;

(J) Issuance of written evidence of insurance; or

(K) Application for reinstatement of an insurance policy;

(2) Soliciting or accepting insurance or renewal of insurance by or for an insurer which the person knows is insolvent or has a strong likelihood of insolvency;

(3) Removal or tampering with the records of transaction, documentation, and other material assets of an insurer from the insurer or from the Department of Insurance and Securities Regulation;

(4) Diversion, misappropriation, conversion, or embezzlement of funds of an insurer, an insured, claimant or applicant regarding any of the following:

(A) Insurance transaction;

(B) Other insurance business activities by an insurer or insurance professional; or

(C) Acquisition, formation, merger, affiliation or dissolution of an insurer.

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or

(6) Attempt to commit, aiding and abetting in the commission of, or conspiracy to commit the acts or omissions specified in this section. (Dec. 1, 1982, D.C. 4-164, § 125b, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 22-3825.1.

§ 22-3825.3. Insurance fraud in the second degree.

A person commits insurance fraud in the second degree if that person knowingly presents false information or conceals information regarding a material fact in any of the following:

(1) Application for, rating of, or renewal of an insurance policy or reinsurance contract;

(2) Claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(3) Premiums paid on an insurance policy or reinsurance contract;

(4) Payment made in accordance with the terms of an insurance policy or reinsurance contract;

(5) Application used in a premium finance transaction;

(6) Solicitation for sale of an insurance policy;

(7) Application for a license or certificate of authority filed with the Commissioner or the chief insurance regulatory official of another jurisdiction;

(8) Financial statement or condition of any insurer or reinsurer;

(9) Acquisition, formation, merger, affiliation, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in the District by an insurer or reinsurer;

(10) Issuance of written evidence of insurance; or

(11) Application for reinstatement of an insurance policy. (Dec. 1, 1982, D.C. 4-164, § 125c, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 22-3825.1.

§ 22-3825.4. Penalties.

(a) Any person convicted of insurance fraud in the first degree shall be subject to a fine of not more than $50,000 or imprisonment for not more than 15 years, or both.

(b) Any person convicted of insurance fraud in the second degree shall be subject to the following:

(1) A fine of not more than $5,000 or imprisonment for not more than 5 years, or both; or

(2) A fine of not more than $10,000 or imprisonment for not more than 10 years, or both, for a second or subsequent offense under § 22-3825.3 or a conviction based on similar grounds in any other jurisdiction.

(c) A person convicted of a felony violation of this subchapter disqualified from engaging in the business of insurance, subject to 18 U.S.C. § 1033(e)(2). (Dec. 1, 1982, D.C. 4-164, § 125d, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 22-3825.1.

§ 22-3825.5. Restitution.

(a) In addition to the penalties provided under § 22-3825.4, a person convicted under this subchapter shall make monetary restitution for any loss caused by the offense. The court shall determine the form and method of payment which, if by installment, shall not exceed 5 years.

(b) Any person, including the District, injured as the result of an insurance fraud in the first degree may bring suit in the appropriate court to recover ordinary damages including attorney's fees and other costs and punitive damages which shall not be less than $500 nor more than $50,000. Except where punitive damages are sought, the court shall award treble damages where the offense is proven by clear and convincing evidence to be in accordance with an established pattern or practice.

(c) Notwithstanding any action that may be brought by the United States Attorney's office to recoup its costs in prosecuting these cases, the Corporation Counsel may bring a civil suit against any person convicted under this subchapter in order to recover investigation and prosecution-related costs incurred by the District.

(d) A suit under subsection (b) of this section must be filed within 3 years of the act constituting the offense or within 3 years of the time the plaintiff

discovered or with reasonable diligence could have discovered the act, whichever is later. This 3 year statute of limitations shall not apply to the District.

(e) Remedies provided in this section shall be exclusive and may not be claimed in conjunction with any other remedies available under the law. (Dec. 1, 1982, D.C. 4-164, § 125e, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 23-3825.1.

§ 22-3825.6. Indemnity.

An insurer shall not be liable for the following:

(1) Damages or restitution provided by this subchapter, either jointly, severably, or as a third party, for insurance fraud offense committed by an insured; or

(2) The defense of an insured or other person who is charged with insurance fraud. (Dec. 1, 1982, D.C. 4-164, § 125f, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 23-3825.1.

§ 22-3825.7. Practitioners.

(a) Notwithstanding any other provisions of law, the offense of insurance fraud in the first degree shall be deemed a crime of moral turpitude for the purposes of professional or trade license.

(b) The court or prosecutor shall notify the appropriate licensing authority, and the person who is injured by the offense may notify the appropriate licensing authority of any conviction. The Commissioner shall hold a disciplinary hearing to determine whether the license or certificate of authority of the convicted practitioner should be suspended or revoked. (Dec. 1, 1982, D.C. 4-164, § 125g, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 23-3825.1.

§ 22-3825.8. Investigation and report of insurance fraud.

(a) Based upon a reasonable belief, an insurer, insurance professional, and any other pertinent person, shall report to the Metropolitan Police Department or the Department of Insurance and Securities Regulation, actions that may constitute the commission of insurance fraud, and assist in the investigation of insurance fraud by reasonably providing information when required by an investigating authority.

(b) The Commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance. Nothing in this subchapter shall preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

(c) An insurer, insurance professional, or any other pertinent person who fails to reasonably assist the investigation of an insurance fraud or fails to report an insurance fraud, and who is injured by that insurance fraud, shall be estopped from receiving restitution as provided in § 22-3825.5.

(d) Any information, documentation, or other evidence provided under this section by an insurer, its employees, producers, or agents, or by any other person, to the Department of Insurance and Securities Regulation, the Metropolitan Police Department, or any other law enforcement agency in connection with any investigation of suspected fraud is not subject to public inspection as long as the Commissioner or law enforcement agency deems the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person or entity investigated from unwarranted injury.

(e) No person shall be subject to civil liability for any cause of action, or subject to criminal prosecution, for reporting any suspected insurance fraud if:

(1) The report was made to the Department of Insurance and Securities Regulation, the Metropolitan Police Department, or any other law enforcement authority, or to any insurer, insurance agent, or other person who collects, reviews, or analyzes information concerning insurance fraud, by any individual or entity suspecting insurance fraud; and

(2) The person or entity reporting the suspected fraud acted without malice when making the report. (Dec. 1, 1982, D.C. 4-164, § 125h, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 23-3825.1.

§ 22-3825.9. Insurance fraud prevention and detection.

(a) Within 6 months of April 27, 1999, every insurer licensed in the District shall submit to the Department of Insurance and Securities Regulation, an insurance fraud prevention and detection plan ("plan"). The plan shall indicate specific procedures for the accomplishment of the following:

(1) Prevention, detection, and investigation of insurance fraud;

(2) Orientation of employees on insurance fraud prevention and detection;

(3) Employment of fraud investigators;

(4) Reporting of insurance fraud to the appropriate authorities; and

(5) Collection of restitution for financial loss caused by insurance fraud.

(b) The Commissioner may review the plan for compliance with this section and may order reasonable modification or request a summary of the plan. The Commissioner may establish by regulation a fine for an insurer failing to comply with the plan. The plan shall not be deemed a public record for the purposes of any public records or subchapter II of Chapter 15 of Title 1.

(c) Notwithstanding any other provisions of law, an insurer who fails to submit an insurance prevention and detection plan, or the warning provision required by subsection (d) of this section shall be subject to a fine of $500 per day, not to exceed $25,000.

(d) No later than 6 months after April 27, 1999, all insurance application forms and all claim forms shall contain a conspicuous warning in language the same or substantially similar to the following:

"WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person.

Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.".

(e) None of the requirements of this section shall be deemed to apply to reinsurers, reinsurance contracts, reinsurance agreements, or reinsurance claims transactions. (Dec. 1, 1982, D.C. 4-164, § 125i, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 22-3825.1.

§ 22-3825.10. Regulations.

The Commissioner may promulgate regulations deemed necessary by the Commissioner for the administration of this subchapter. (Dec. 1, 1982, D.C. 4-164, § 125j, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132.)

Effect of amendments. — D.C. Law 12-273 added this section.

Legislative history of Law 12-273. — See note to § 22-3825.1.

Subchapter IV. Stolen Property.

§ 22-3832. Receiving stolen property.

Value of stolen property.

In a prosecution for receiving stolen property, evidence was sufficient to establish the value of a stolen vehicle where the owner testified as to the price paid for the automobile, and that it was in good working order when it was stolen. Terrell v. United States, App. D.C., 721 A.2d 957 (1998).

Cited in In re Fogel, App. D.C., 679 A.2d 1052 (1996).

Subchapter V. Forgery.

§ 22-3841. Forgery.

Utter. — A person "utters" so long as he or she displays an instrument that is reasonably adapted to deceive a person of ordinary intelligence, knowing it to be forged and intending thereby to defraud or injure another. No additional words or action constituting a representation are necessary. Short v. United States, App. D.C., 676 A.2d 910 (1996).

Sufficiency of indictment. — Where it was not obvious that the words "presented ... as true and genuine" referred only to the defendant's fraudulent intent in presenting the document, not to the document itself as capable of being taken for genuine, but the indictment linked those words to "a falsely made and altered ... flash pass," and a copy of the flash pass was attached to the indictment, the indictment reasonably charged that the flash pass, though made so as to deceive a person of ordinary intelligence as to its genuineness, was falsely made and altered. Short v. United States, App. D.C., 676 A.2d 910 (1996).

Evidence held sufficient to support conviction. — See Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

§ 22-3842. Penalties for forgery.

Cited in Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

Subchapter VI. Extortion.

§ 22-3851. Extortion.

Cited in Ko v. United States, App. D.C., 694 A.2d 73 (1997); Gilliam v. United States, App. D.C., 707 A.2d 784 (1998).

CHAPTER 39. CRIMES COMMITTED AGAINST SENIOR CITIZEN VICTIMS.

§ 22-3901. Enhanced penalty.

Evidence insufficient to sustain conviction. — Evidence presented was insufficient to prove beyond a reasonable doubt that defendants were guilty of either robbery or robbery of a senior citizen where there was no direct evidence that defendants took wallets from the immediate actual possession of victims or their person or that a pickpocketing even took place, and where no expert testimony was presented as to methods used by pickpockets to remove wallets from clothing of individuals, or amount of force necessary to pick a pocket. Zanders v. United States, App. D.C., 678 A.2d 556 (1996).

Cited in Gilliam v. United States, App. D.C., 707 A.2d 784 (1998).

CHAPTER 41. SEXUAL ABUSE.

Subchapter II. Sex Offenses.

Subchapter I. General Provisions.

§ 22-4101. Definitions.

Consent.

In determining whether a defendant has proved consent, voluntariness is not the standard; the correct standard under this section is whether a reasonable person would think that the complainant's words or overt actions indicated a freely given agreement to the sexual act or contact in question. Russell v. United States, App. D.C., 698 A.2d 1007 (1997).

Cited in Proctor v. United States, App. D.C., 685 A.2d 735 (1996); Oliver v. United States, App. D.C., 711 A.2d 70 (1998).

Subchapter II. Sex Offenses.

§ 22-4102. First degree sexual abuse.

A person shall be imprisoned for any term of years or for life, and in addition, may be fined in an amount not to exceed $250,000, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

* * * * *

(4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct. (May 23, 1995, D.C. Law 10-257, § 201, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(a), 44 DCR 1408.)

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections in the introductory language and in (4); and, inserted a comma following "in addition" in the introductory language.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Instructions on burden of proof. — Due process was violated where the trial court gave the standard general instruction on the government's burden of proof in a rape prosecution, but did not inform the jury that it could consider defendant's evidence of consent with respect to the question of whether the government proved beyond a reasonable doubt that the act was accomplished by force. Russell v. United States, App. D.C., 698 A.2d 1007 (1997).

Cited in Bailey v. United States, App. D.C., 699 A.2d 392 (1997); Hicks v. United States, 707 A.2d 1301 (D.C. 1998).

§ 22-4103. Second degree sexual abuse.

A person shall be imprisoned for not more than 20 years and may be fined in an amount not to exceed $200,000, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

* * * * *

(2) Where the person knows or has reason to know that the other person is:

* * * * *

(C) Incapable of communicating unwillingness to engage in that sexual act. (May 23, 1995, D.C. Law 10-257, § 202, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(b), 44 DCR 1408.)

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections in the introductory language, in the introductory language of (2), and in (2)(C).

Legislative history of Law 11-275. — See note to § 22-4102.

§ 22-4104. Third degree sexual abuse.

A person shall be imprisoned for not more than 10 years and may be fined in an amount not to exceed $100,000, if that person engages in or causes sexual contact with or by another person in the following manner:

* * * * *

(4) After administering to that person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct. (May 23, 1995, D.C. Law 10-257, § 203, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(c), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections in the introductory language and in (4).

Legislative history of Law 11-275. — See note to § 22-4102.

§ 22-4105. Fourth degree sexual abuse.

A person shall be imprisoned for not more than 5 years and, in addition, may be fined in an amount not to exceed $50,000, if that person engages in or causes sexual contact with or by another person in the following manner:

* * * * *

(2) Where the person knows or has reason to know that the other person is:

* * * * *

(C) Incapable of communicating unwillingness to engage in that sexual contact. (May 23, 1995, D.C. Law 10-257, § 204, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(d), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections in the introductory language, in the introductory language of (2), and in (2)(C).

Legislative history of Law 11-275. — See note to § 22-4102.

§ 22-4107. Defense to sexual abuse.

Constitutionality. — This section does not offend the requirement of due process, despite its requirement that the defense establish consent by a preponderance of the evidence, because the legislature did not exclude consent evidence as relevant to the government's burden of proof on the elements of the offense. Russell v. United States, App. D.C., 698 A.2d 1007 (1997).

§ 22-4108. First degree child sexual abuse.

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Convictions for taking indecent liberties and sodomy merged. Pace v. United States, App. D.C., 705 A.2d 673 (1998).

§ 22-4109. Second degree child sexual abuse.

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Cited in Pace v. United States, App. D.C., 705 A.2d 673 (1998); Diaz v. United States, App. D.C., 716 A.2d 173 (1998).

§ 22-4110. Enticing a child.

Cross references. — As to sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000, see § 24-203.1.

Cited in Tyler v. United States, App. D.C., 705 A.2d 270 (1997); Pace v. United States, App. D.C., 705 A.2d 673 (1998); Oliver v. United States, App. D.C., 711 A.2d 70 (1998).

§ 22-4111. Defenses to child sexual abuse.

Cited in Russell v. United States, App. D.C., 698 A.2d 1007 (1997); Pace v. United States, App. D.C., 705 A.2d 673 (1998).

§ 22-4112. State of mind proof requirement.

Cited in Pace v. United States, App. D.C., 705 A.2d 673 (1998).

§ 22-4113. First degree sexual abuse of a ward.

* * * * *

(May 23, 1995, D.C. Law 10-257, § 212, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(a), 43 DCR 528.)

Effect of amendments. — D.C. Law 11-119 validated a previously made correction in (2).

Legislative history of Law 11-119. — Law 11-119, the "Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-484, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-198 and transmitted to both Houses of Congress for its review. D.C. Law 11-119 became effective May 17, 1996.

Editor's notes. — D.C. Act 11-198 which affected this section as set out in the 1996 Replacement volume became Law 11-119, effective May 17, 1996. The historical citation for this section and the notes relating to D. C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

§ 22-4115. First degree sexual abuse of a patient or client.

* * * * *

(May 23, 1995, D.C. Law 10-257, § 214, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(b), 43 DCR 528.)

Effect of amendments. — D.C. Law 11-119 substituted "more than 10" for "more that 10" in (b).

Legislative history of Law 11-119. — See note to § 22-4113.

Editor's notes. — D.C. Act 11-198 which affected this section as set out in the 1996 Replacement volume became Law 11-119, effective May 17, 1996. The historical citation for this section and the notes relating to D.C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

Cited in McCracken v. Walls-Kaufman, App. D.C., 717 A.2d 346 (1998).

§ 22-4117. Defenses to sexual abuse of a ward, patient, or client.

Cited in Russell v. United States, App. D.C., 698 A.2d 1007 (1997).

§ 22-4120. Aggravating circumstances.

* * * * *

(May 23, 1995, D.C. Law 10-257, § 219, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(c), 43 DCR 528.)

Effect of amendments. — D.C. Law 11-119 validated a previously made change in the introductory language of (a).

Legislative history of Law 11-119. — See note to § 22-4113.

Editor's notes. — D.C. Act 11-198 which affected this section as set out in the 1996 Replacement volume became Law 11-119, effective May 17, 1996. The historical citation for this section and the notes relating to D.C. Law 11-119 have been set out above to reflect the law number and effective date of D.C. Law 11-119.

CHAPTER 42. NATIONAL INSTITUTE OF JUSTICE APPROPRIATIONS.

Sec.
22-4201. Technical assistance and research.

§ 22-4201. Technical assistance and research.

There are authorized to be appropriated to the National Institute of Justice in each fiscal year (beginning with fiscal year 1998) such sums as may be necessary for the following activities:

(1) Research and demonstration projects, evaluations, and technical assistance to assess and analyze the crime problem in the District of Columbia, and to improve the ability of the criminal justice and other systems and entities in the District of Columbia to prevent, solve, and punish crimes.

(2) The establishment of a locally-based corporation or institute in the District of Columbia supporting research and demonstration projects relating to the prevention, solution, or punishment of crimes in the District of Columbia, including the provision of related technical assistance. (Aug. 5, 1997, 111 Stat. 763, Pub. L. 105-33, § 11281.)

Effective date of Title XI of Pub. L. 105-33. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

TITLE 23. CRIMINAL PROCEDURE.

CHAPTER 1. GENERAL PROVISIONS.

§ 23-101. Conduct of prosecutions.

D.C. Law Review. — For essay, "The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority," see 4 D.C.L. Rev. 77 (1998).

Prosecutions maintained in name of United States.

Section 22-2701, imposing punishment for soliciting for the purposes of prostitution, is not a penal statute in the nature of a police or municipal regulation but is a criminal statute so that prosecutions under it are to be conducted in the name of the United States. In re Monaghan, App. D.C., 690 A.2d 476 (1997).

Cited in Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

§ 23-102. Abandonment of prosecution; enlargement of time for taking action.

Cited in McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

§ 23-104. Appeals by United States and District of Columbia.

I. GENERAL CONSIDERATION.

Section construed broadly. — This section is construed broadly, since the government has no right to appeal acquittals of defendants and since pretrial rulings may become the law of the case. United States v. Williams, App. D.C., 697 A.2d 1244 (1997).

Paragraph (a)(1) of this section must be given a liberal construction. United States v. Hammond, App. D.C., 681 A.2d 1140 (1996).

Appeal after dismissal. — Where the trial court substantially dismissed the stalking counts through its interpretation of the statute, the trial court's ruling with respect to the stalking counts was an appealable order pursuant to subsection (c). United States v. Smith, App. D.C., 685 A.2d 380 (1996), cert. denied, — U.S. —, 118 S. Ct. 152, 139 L. Ed. 2d 98 (1997).

Cited in United States v. White, App. D.C., 689 A.2d 535 (1997); United States v. Hunter, App. D.C., 692 A.2d 1370 (1997); United States v. Watson, App. D.C., 697 A.2d 36 (1997); United States v. Turner, App. D.C., 699 A.2d 1125 (1997); United States v. Brown, App. D.C., 700 A.2d 760 (1997); Brooks v. United States, App. D.C., 717 A.2d 323 (1998).

II. PRETRIAL ORDERS.

Government may appeal pretrial evidentiary decisions, etc.

Subdivision (a)(1) of this section accords the government a clear right to appeal evidentiary rulings of the trial court that exclude evidence that the prosecutor believes to constitute substantial proof of that charge pending against the defendant. United States v. Williams, App. D.C., 697 A.2d 1244 (1997).

Subdivision (a)(1) of this section permits the government to appeal pretrial orders denying it the right to introduce specified evidence on the grounds that it is hearsay or lacks sufficient relevance to trial issues, and it may do so even if the order was tentative in the sense that the trial judge is free to rule again on the relevance of the evidence in the context of the trial. United States v. Williams, App. D.C., 697 A.2d 1244 (1997).

The government may appeal from any pretrial evidentiary ruling, oral or written, excluding or suppressing evidence, provided that the terms of paragraph (a)(1) of this section are met, i.e., that the government makes the proper certification. United States v. Hammond, App. D.C., 681 A.2d 1140 (1996).

Ruling on admissibility appealable where final and unequivocal. — Although the trial court's written ruling that the government was precluded from introducing any evidence of other crimes was only advisory, it was unequivocal, final, and appealable. United States v. Williams, App. D.C., 697 A.2d 1244 (1997).

IV. ORDERS TERMINATING PROSECUTIONS.

Dismissal of contempt proceedings. — Once the trial court has ordered a person to show cause why he or she should not be held in criminal contempt, and the issue has been joined, a dismissal of the contempt proceeding is the legal equivalent of terminating a prosecution in favor of a defendant and is appealable. United States v. Maye, App. D.C., 675 A.2d 57 (1996).

Court's refusal to issue show cause order as to why federal drug enforcement agent should not be held in contempt on the grounds that perjury does not constitute contempt unless some clear additional showing of obstruction of the court in the performance of its duty is made was not appealable, not being different functionally from dismissal of a criminal complaint at a preliminary hearing for lack of probable cause. United States v. Maye, App. D.C., 675 A.2d 57 (1996).

§ 23-105. Challenges to jurors.

Explaining peremptory challenges. Through their exercise of peremptory challenges, parties may express an arbitrary preference for a particular type of juror, thus attempting to affect the outcome of the case in a manner that each party considers favorable; nevertheless, the parties' ability to act upon their arbitrary preferences is limited by the right of the juror not to be excluded from a jury for unconstitutional reasons. Evans v. United States, App. D.C., 682 A.2d 644 (1996).

Peremptory challenges based on age. — The language and legislative history of the District of Columbia Human Rights Act does not support a prohibition on peremptory challenges based on age. Evans v. United States, App. D.C., 682 A.2d 644 (1996).

Allowance of additional challenge. — The trial court deprived appellants of no right to the fruits of a "strategy" to win the seating of a juror where the judge allowed each side an additional peremptory which may have disappointed somewhat appellants' effort to shape the jury to their liking, but which was a proper response to the mishap that had occurred (juror had mistakenly seated herself out of order), reflecting the practical necessities of judicial management of the voir dire process. Stevens v. United States, App. D.C., 683 A.2d 452 (1996), cert. denied, — U.S. —, 118 S. Ct. 211, 139 L. Ed. 2d 146 (1997).

Appellate review. — In order to win reversal on the basis that a jury selection procedure used by the trial judge frustrated defendant's effective use of peremptory challenges, defendant must show not only that there was error in the jury selection procedure, but that defendant suffered prejudice as a result of the error. Lee v. United States, App. D.C., 699 A.2d 373 (1997).

§ 23-109. Powers of investigators assigned to United States Attorney.

Any special investigator appointed by the Attorney General and assigned to the United States Attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police Department of the District of Columbia. (July 29, 1970, 84 Stat. 608, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-109; June 3, 1997, D.C. Law 11-275, § 14(a), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made capitalization correction.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 23-110. Remedies on motion attacking sentence.

Section is substantially identical to 28 U.S.C. § 2255, etc.

This section was "deliberately patterned" after the federal habeas statutes. As a result, the language in both statutes is "substantially identical." Based on this similarity, the Court of Appeals has repeatedly turned to federal court interpretations of 28 U.S.C. § 2255 for guidance. In fact, Supreme Court decisions that concern federal habeas challenges are the established standards applicable to this section. United States v. Muskelly, 124 WLR 1389 (Super. Ct. 1996).

Only most serious and extraordinary nonconstitutional errors cognizable. — Only the most serious and extraordinary nonconstitutional errors are cognizable for habeas review. Where the defendants alleged neither the denial of a "basic right" nor the violation of court rules, the claim fell short of being a miscarriage of justice or an exceptional circumstance. United States v. Muskelly, 124 WLR 1389 (Super. Ct. 1996).

Purpose of motion under this section. — One purpose of a motion under this section is to raise factual questions that can only be answered by resort to information outside the trial record. Bullock v. United States, 709 A.2d 87 (D.C. 1998).

Requisites for collateral attack.

Subsequent conviction for narcotics trafficking of police officer who testified for government at defendants' trial did not render defendants' convictions subject to collateral attack under this section. United States v. Muskelly, 124 WLR 1577 (Super. Ct. 1996).

Denial not appealable order. — Appeal from denial of motion for reconsideration is not an appealable order. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Denial of counsel for collateral attack. — The denial of a request for counsel in connection with pursuit of a collateral attack on a conviction under this section is not a final order and hence not appealable; however, the denial of a motion for appointment may be appealable if it can be construed as the denial of a request for relief. Garmon v. United States, App. D.C., 684 A.2d 327 (1996).

Erroneous decision to jointly try offenses relating to separate incidents. — Court of Appeals' decision, that Superior Court's error in jointly trying offenses relating to separate incidents was harmless because the evidence underlying the severed counts would likely have been admissible in each trial had separate trials taken place, was not so arbitrary and capricious as to deny defendant due process. Byrd v. Henderson, 119 F.3d 34 (D.C. Cir. 1997).

Standards for summary denial without hearing.

In denying a motion without a hearing, the court must conclude that under no circumstances could the petitioner establish facts warranting relief. Dobson v. United States, App. D.C., 711 A.2d 78 (1998).

Presumption favoring hearing.

For claims of ineffective assistance of counsel, there is a presumption that a hearing should be held, especially where the allegations of ineffectiveness relate to facts outside the trial record; any question regarding the appropriateness of a hearing should be resolved in favor of holding a hearing. Newman v. United States, App. D.C., 705 A.2d 246 (1997).

No automatic right to hearing. — There is no automatic right to a hearing when a defendant seeks post-conviction relief pursuant to this section; a hearing is unnecessary when the existing record provides an adequate basis for deciding the motion, or when the motion consists of vague and conclusory allegations, palpably credible claims, or allegations that would merit no relief even if true. Dantzler v. United States, App. D.C., 696 A.2d 1349 (1997).

Requirements to prevail, and for hearing, on ineffective assistance of counsel.

The trial court did not commit error by relying on the government's unrebutted affidavit, which was submitted to refute defendant's ineffective assistance of counsel allegations, in concluding that defendant's allegations were too vague and conclusory to warrant a hearing. Spencer v. United States, App. D.C., 688 A.2d 412 (1997).

In addition to showing counsel's deficient performance, the convicted defendant must demonstrate that he was prejudiced by counsel's deficient performance by showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

Especially where he alleges ineffective assistance of counsel.

Once a movant makes a colorable claim that, if true, would provide a basis of relief, the trial court should not decide the matter summarily. Newman v. United States, App. D.C., 705 A.2d 246 (1997).

But hearing not automatic even when effectiveness of counsel challenged.

Where defendant's motion for new trial was vague and conclusory and would not entitle defendant to a new trial even if its assertions were true, denial of motion without a hearing was not in error. James v. United States, App. D.C., 718 A.2d 1083 (1998).

Allegations sufficient to require hearing.

Evidence sufficient to establish a hearing should be held with regard to defendant's mo-

tion under this section. Reaves v. United States, App. D.C., 694 A.2d 52 (1997).

Where it appeared that defense counsel overstated its evidence in its opening statement and could not be trusted to keep its promises, there may have been a significant effect on a jury's evaluation of the case, and petitioner's allegations are sufficient to require a hearing. Dobson v. United States, App. D.C., 711 A.2d 78 (1998).

When a § 23-110 motion is based on a complaint of ineffective assistance of counsel and the claim involves facts not contained in the record, the trial court must grant a hearing, unless the claims 1) are palpably incredible; 2) are vague and conclusory; or 3) even if true, do not entitle the movant to relief. Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

Collateral estoppel of malpractice claim. — Denial of an ineffectiveness claim by necessity bars a malpractice action by collateral estoppel, or alternatively, bars malpractice relief unless and until the underlying criminal conviction is successfully attacked. Smith v. Public Defender Serv. for D.C., App. D.C., 686 A.2d 210 (1996).

Three categories of claims do not merit hearings:

This section requires an evidentiary hearing unless the allegations of the motion itself are vague and conclusory, are wholly incredible, or even if true, would merit no relief. Dobson v. United States, App. D.C., 711 A.2d 78 (1998).

Postsentence motion treated as presentence motion. — Where the plea judge sentenced defendant after erroneously denying, without a hearing, defendant's motion to vacate his guilty plea, the motions judge should have treated defendant's subsequent motion to vacate the plea as a presentence motion brought under Super. Ct. Crim. R. 32(e); the judge should have applied the less stringent presentence standard rather than the postsentence standard. Pettiford v. United States, App. D.C., 700 A.2d 207 (1997).

Frivolous post-trial motions. — A prisoner who repeatedly filed frivolous pro se pleadings seeking post-trial relief based on arguments that he knew had been consistently denied or rejected in the past would be required to show cause why he should not be enjoined from filing further post-trial motions without first obtaining permission from the court to do so. United States v. Anderson, 126 WLR 805 (Super. Ct. 1998).

Evaluation of defendant's motion alleging ineffective assistance of counsel.

A timely post-conviction letter to the trial judge from defendant outlining his attorney's failure to investigate the case sufficiently and the defendant's discovery of a possible conflict of interest concerning the attorney's representation was treated as a motion for a new trial based on ineffective assistance of counsel. Derrington v. United States, App. D.C., 681 A.2d 1125 (1996).

Although the government described defendant's allegations as "vague and conclusory," the existing record did not provide an adequate basis for disposing of his motion because of his allegation that trial counsel told him she "messed up in his case" and because of his allegation that his representation was compromised by her alleged conflict of interest. Thomas v. United States, App. D.C., 685 A.2d 745 (1996).

Because the court could not determine whether counsel's professional judgment on behalf of her client was adversely affected by her intimate personal relationship with a testifying government witness, an officer of the 5th District, the matter was remanded to the trial court. Thomas v. United States, App. D.C., 685 A.2d 745 (1996).

Failure to raise claim of ineffective counsel during direct appeal necessitates showing of cause and prejudice.

Where the appellant's trial counsel was also his appellate counsel on direct appeal, the appellant's motion under this section, alleging ineffective assistance of counsel, was not procedurally barred for failure to bring his claim during his direct appeal. Sullivan v. United States, App. D.C., 721 A.2d 936 (1998).

Lapse of time and prejudice to the government cannot, by themselves, bar a motion under this section.

The court's decision in Ramsey v. United States is binding authority, and therefore the court is not free to follow decisions applying the Congressionally enacted federal doctrine. Dobson v. United States, App. D.C., 711 A.2d 78 (1998).

Nor where counsel failed to ask for intoxication-defense instruction. — Since evidence at trial did not justify the giving of an intoxication-defense instruction, counsel's failure to ask for it did not represent deficient performance. Washington v. United States, App. D.C., 689 A.2d 568 (1997).

Nor where counsel failed to file motion to suppress identification. — Failure to file a motion to suppress identification did not constitute ineffective assistance of counsel where such motion would not have been granted. Washington v. United States, App. D.C., 689 A.2d 568 (1997).

Failure to request involuntary manslaughter instruction. — Defendant could not prevail on his challenge to the court's ruling on the § 23-110 motion on the basis of counsel's failure to request instructions on involuntary manslaughter and the "castle doctrine", where defendant could not show that counsel's performance was deficient given the controlling law and the evidence of record. Therefore, defendant did not meet the test of demonstrating that the result would have been different had his counsel sought the instructions. Smith v. United States, App. D.C., 686 A.2d 537 (1996),

cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Conduct not constituting ineffective assistance of counsel.

No prejudice found where trial counsel incorrectly advised defendant that the charge of voluntary manslaughter carried a five-year mandatory minimum term of incarceration due to the armed element. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Since defendant did not claim that he knew about victim's prior conviction for armed robbery, the evidence would have been inadmissible and defendant could not show prejudice from counsel's failure to renew his request for its admission. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

Ineffective assistance of counsel not found.

Where defendant's counsel failed to file a suppression motion that would have been denied under the apparent authority doctrine existing at the time of the search and defendant's trial, the court properly denied the motion to vacate conviction and sentence. Wright v. United States, App. D.C., 717 A.2d 304 (1998).

Motion to withdraw guilty plea denied. — Trial court did not err in denying defendant's motion to withdraw his guilty plea, where the only grounds for withdrawal presented were vague and conclusory allegations that trial counsel was ineffective, and where there was no possible prejudice from the alleged ineffectiveness due to the overwhelming evidence of defendant's guilt and the absence of credible exculpatory evidence. Southall v. United States, App. D.C., 716 A.2d 183 (1998).

New evidence. — Denial of motion for new trial was proper where the proffered new evidence was largely impeachment evidence and, if admissible would not, in the main, be a substantive showing of guilt or innocence and would probably not make a difference to the outcome of the case. Brooks v. United States, App. D.C., 683 A.2d 1369 (1995).

Appellate review. — Court of Appeals will review claims of ineffective assistance of counsel never made in a § 23-110 motion on the basis of the trial record alone. Smith v. United States, App. D.C., 686 A.2d 537 (1996), cert. denied, — U.S. —, 118 S. Ct. 115, 139 L. Ed. 2d 67 (1997).

A trial court's denial of a motion under this section will be affirmed without a hearing only if the claims (1) are palpably incredible; (2) are vague and conclusory; or (3) even if true, do not entitle the movant to relief. Newman v. United States, App. D.C., 705 A.2d 246 (1997).

Cited in Gryce v. Lavine, App. D.C., 675 A.2d 67 (1996); Bell v. United States, App. D.C., 676 A.2d 37 (1996); Zanders v. United States, App. D.C., 678 A.2d 556 (1996); Tomlin v. United States, App. D.C., 680 A.2d 1020 (1996); Herbin v. United States, App. D.C., 683 A.2d 437 (1996); Smith v. United States, App. D.C., 687 A.2d 581 (1996); Farley v. United States, App. D.C., 694 A.2d 887 (1997); Payne v. United States, App. D.C., 697 A.2d 1229 (1997); Richardson v. United States, App. D.C., 698 A.2d 442 (1997); Fields v. United States, App. D.C., 698 A.2d 485 (1997); Gibson v. United States, App. D.C., 700 A.2d 776 (1997); Russell v. United States, App. D.C., 701 A.2d 1093 (1997); Forrester v. United States, App. D.C., 707 A.2d 63 (1998); Carle v. United States, App. D.C., 705 A.2d 682 (1998), cert. denied, — U.S. —, 118 S. Ct. 1400, 140 L. Ed. 2d 658 (1998); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Dobson v. United States, App. D.C., 711 A.2d 78 (1998); Blair-Bey v. Quick, 151 F.3d 1036 (D.C. Cir. 1998); Page v. United States, App. D.C., 715 A.2d 890 (1998); Alexander v. United States, App. D.C., 718 A.2d 137 (1998).

§ 23-111. Proceedings to establish previous convictions.

Cited in Brown v. United States, App. D.C., 675 A.2d 953 (1996); In re Monaghan, App. D.C., 690 A.2d 476 (1997); Gilmore v. United States, App. D.C., 699 A.2d 1130 (1997).

§ 23-112. Consecutive and concurrent sentences.

Section codifies rule in Blockburger v. United States. — This section codifies the rule in Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932), for determining whether two or more criminal convictions merge. Allen v. United States, App. D.C., 697 A.2d 1 (1997).

The rule in Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932), for determining whether two or more criminal convictions merge, is to be applied in the analysis of multiple punishment issues in the absence of a clear indication of contrary legislative intent. Allen v. United States, App. D.C., 697 A.2d 1 (1997).

Sentencing under the Youth Rehabilitation Act. — Under the Youth Rehabilitation Act, consecutive sentences are not only permissible, but required unless the sentencing judge provides otherwise. Bragdon v. United States, App. D.C., 717 A.2d 878 (1998).

The Youth Rehabilitation Act imposes no special limitation on the duration of time that a youth offender can be incarcerated, and pro-

vides specifically for any sentence up to the maximum provided by law. Bragdon v. United States, App. D.C., 717 A.2d 878 (1998).

CHAPTER 3. INDICTMENTS AND INFORMATIONS.

Subchapter II. Joinder.

§ 23-311. Joinder of offenses and of defendants.

In general. — Two or more offenses may be charged in the same indictment if the offenses charged are based on two or more acts or transactions connected together. Brown v. United States, App. D.C., 718 A.2d 95 (1998).

Limiting instruction held sufficient to cure prejudice. — Any prejudice caused by the erroneous admission of evidence on one joined charge was sufficiently corrected by the trial court's limiting instruction emphasizing that the erroneously-admitted evidence was not to be considered in determining defendant's guilt on the other charge. Brown v. United States, App. D.C., 718 A.2d 95 (1998).

§ 23-312. Joinder of indictments or informations for trial.

Cited in Brown v. United States, App. D.C., 718 A.2d 95 (1998).

CHAPTER 5. WARRANTS AND ARRESTS.

Subchapter I. Definitions.

Sec.
23-501. Definitions.

Subchapter II. Search Warrants.

23-523. Time of execution of search warrants.
23-525. Disposition of property.

Subchapter III. Wire Interception and Interception of Oral Communications.

23-541. Definitions.
23-547. Procedure for authorization or approval of interception of wire or oral communications.
23-555. Reports concerning intercepted wire or oral communications.

Subchapter IV. Arrest Warrant and Summons.

23-562. Execution and return.

Subchapter I. Definitions.

§ 23-501. Definitions.

As used in subchapters II, IV, and V of this chapter —

* * * * *

(2) The term "law enforcement officer" means an officer or member of the Metropolitan Police Department of the District of Columbia, or of any other police force operating in the District of Columbia; an investigative officer or agent of the United States; animal control officer employed by the District of Columbia; or the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the

District of Columbia, for the purpose of enforcing arson and the fire safety laws of the District of Columbia, who is so designated in writing by the Fire Chief.

* * * * *

(Mar. 26, 1999, D.C. Law 12-176, § 4, 45 DCR 5662.)

Effect of amendments. — D.C. Law 12-176 in (2), added the language following "or animal control officer employed by the District of Columbia" and made related stylistic changes.

Emergency act amendments. — For temporary amendment of section, see § 4 of the Arson Investigators Emergency Amendment Act of 1998 (D.C. Act 12-406, July 13, 1998, 45 DCR 4833), § 4 of the Arson Investigators Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-466, October 28, 1998, 45 DCR 7838), and § 4 of the Arson Investigators Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-539, December 24, 1998, 46 DCR 297).

Section 7 of D.C. Act 12-466 provides for the application of the act.

Section 7 of D.C. Act 12-539 provides for the application of the act.

Legislative history of Law 12-176. — Law 12-176, the "Arson Investigator Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-485, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-418 and transmitted to both Houses of Congress for its review. D.C. Law 12-176 became effective on March 26, 1999.

Subchapter II. Search Warrants.

§ 23-521. Nature and issuance of search warrants.

Property subject to seizure. — Property is subject to seizure pursuant to a search warrant if there is probable cause to believe it is either the intended instrumentality of a crime or constitutes evidence of a crime or the identity of one participating in a crime. Before police may seize an item during a search, it must either be particularly described in a valid search warrant or the police must have found if in plain view during the course of a lawful search and have probable cause to believe that it is incriminating evidence. Irving v. United States, App. D.C., 673 A.2d 1284 (1996).

§ 23-523. Time of execution of search warrants.

(a) A search warrant shall not be executed more than ten days after the date of issuance and shall be returned to the court after its execution or expiration in accordance with section 23-521(f)(6).

* * * * *

(June 3, 1997, D.C. Law 11-275, § 14(b), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made reference correction in (a).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

§ 23-525. Disposition of property.

A law enforcement officer or a designated civilian employee of the Metropolitan Police Department who seizes property in the execution of a search warrant shall cause it to be safely kept for use as evidence. No property seized

shall be released or destroyed except in accordance with law and upon order of a court or of the United States attorney or Corporation Counsel for the District of Columbia or one of their assistants. (July 29, 1970, 84 Stat. 616, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-525; _____, 1999, D.C. Law 12-(Act 12-613), § 8(a), 46 DCR 1328.)

Effect of amendments. — D.C. Law 12-(Act 12-613) substituted "A law enforcement officer or a designated civilian employee of the Metropolitan Police Department" for "An officer or agent."

Temporary amendment of section. — Section 8(a) of D.C. Law 12-(Act 12-492) substituted "A law enforcement officer or a designated civilian employee of the Metropolitan Police Department" for "An officer or agent."

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 8(a) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(a) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 8(a) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Subchapter III. Wire Interception and Interception of Oral Communications.

§ 23-541. Definitions.

As used in this subchapter —

* * * * *

(7) the term "judge" means a judge of the Superior Court of the District of Columbia, a judge of the District of Columbia Court of Appeals, a judge of the United States District Court for the District of Columbia, or a judge of the United States Court of Appeals for the District of Columbia circuit;

(8) the term "judge of competent jurisdiction" means, in addition to the judges included in paragraph (7) —

(A) a judge of a United States district court or a United States court of appeals not in the District of Columbia; or

* * * * *

(June 3, 1997, D.C. Law 11-275, § 14(c), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated previously made stylistic and technical corrections in (7) and (8)(A).

Legislative history of Law 11-275. — See note to § 23-523.

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications.

* * * * *

(f) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

* * * * *

(May 22, 1998, D.C. Law 12-114, § 3(a), 45 DCR 486.)

Effect of amendments. — D.C. Law 12-114 substituted "unobtrusively" for "unobstrusively" in (f).

Legislative history of Law 12-114. — Law 12-114, the "Criminal Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

§ 23-555. Reports concerning intercepted wire or oral communications.

(a) Within thirty days after the expiration of an order or an extension entered under section 23-547 or 23-548 or the denial of an order of approval, the issuing or denying court shall report to the chief judge of the District of Columbia Court of Appeals —

* * * * *

(June 3, 1997, D.C. Law 11-275, § 14(d), 44 DCR 1408.)

Effect of amendments. — D.C. Law 11-275 validated a previously made technical correction in the introductory language of (a).

Legislative history of Law 11-275. — See note to § 23-523.

Subchapter IV. Arrest Warrant and Summons.

§ 23-561. Issuance, form, and contents.

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

§ 23-562. Execution and return.

* * * * *

(c)(1) A law enforcement officer within the District of Columbia making an arrest under a warrant issued pursuant to this subchapter, making an arrest without a warrant, or receiving a person arrested by a special policeman or other person pursuant to § 23-582, or a designated civilian employee of the Metropolitan Police Department receiving a person arrested by a law enforcement officer within the District of Columbia or a special policeman or other person pursuant to § 23-582, shall take the arrested person without unnecessary delay before the court or other judicial officer empowered to commit persons charged with the offense for which the arrest was made. This subsection, however, shall not be construed to conflict with or otherwise supersede section 3501 of Title 18, United States Code. When a person arrested without a warrant is brought before a judicial officer, a complaint or information shall be filed forthwith.

(2) Before taking an arrested person to a judicial officer, a law enforcement officer or a designated civilian employee of the Metropolitan Police Department, may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor shall not constitute a delay within the meaning of this section. (July 29, 1970, 84 Stat. 628, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-562; _____, 1999, D.C. Law 12- (Act 12-613), § 8(b), 46 DCR 1328.)

Effect of amendments. — D.C. Law 12- (D.C. Law 12-613) inserted "or a designated civilian employee of the Metropolitan Police Department receiving a person arrested by a law enforcement officer within the District of Columbia or a special policeman or other person pursuant to § 23-582" in (c)(1); and in (c)(2), inserted "or a designated civilian employee of the Metropolitan Police Department."

Temporary amendment of section. — Section 8(b) of D.C. Law 12-(Act 12-492) inserted "or a designated civilian employee of the Metropolitan Police Department receiving a person arrested by a law enforcement officer within the District of Columbia or a special policeman or other person pursuant to § 23-582" in (c)(1); and in (c)(2), inserted "or a designated civilian employee of the Metropolitan Police Department."

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 8(b) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(b) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 8(b) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act 12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No.

_____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Cited in Rider v. United States, App. D.C., 687 A.2d 1348 (1996); United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

§ 23-563. Territorial and other limits.

Construction with Rules. — Defendants arrested in Maryland on a D.C. warrant were entitled to a removal hearing in Maryland before being brought into the District, pursuant to this section, Rule 5-1, Rules of Criminal Procedure, and Rule 40, Federal Rules of Criminal Procedure. United States v. Washington, 125 WLR 1053 (Super. Ct. 1997).

Service of arrest warrant outside District valid. — An arrest warrant served outside the District of Columbia is valid if potential sanctions for civil contempt could exceed imprisonment for more than one year. Desai v. Fore, App. D.C., 711 A.2d 822 (1998).

Absence of hearing. — Absence of providing defendants with a hearing before deporting them to the District does not require suppression of statements made to District police officers; rather the violation is a factor in the court's analysis of whether the totality of circumstances renders the statements inadmissible. United States v. Washington, 125 WLR 1053 (Super. Ct. 1997).

Bench warrants. — Bench warrants are not governed by the temporal limits of subsection (b) of this section, but rather are governed by § 23-1329, which sets forth no such time limit on the validity of misdemeanor warrants. United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

A warrant issued under § 23-1329 because of a defendant's failure to appear is a device by which a court restores to its custody a person who is already within its jurisdiction, i.e., one who has been arraigned and formally charged with an offense; those warrants are thus distinguishable from warrants issued under this section. United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

Subchapter V. Arrest Without Warrant.

§ 23-581. Arrests without warrant by law enforcement officers.

Intent of officer. — Where officers had objective probable cause to make an arrest, the officers' intent in making the arrest was irrelevant. Karriem v. District of Columbia, App. D.C., 717 A.2d 317 (1998).

Assault. — Paragraph (a)(2) of this section includes the crime of assault as a crime for which a warrantless arrest can be made. Saidi v. Washington Metro. Area Transit Auth., 928 F. Supp. 21 (D.D.C. 1996).

No good faith right to resist arrest. — There is no good faith right in the District of Columbia to resist an arrest, and an officer may arrest without a warrant a person who the officer has probable cause to believe is committing an offense in his presence. Karriem v. District of Columbia, App. D.C., 717 A.2d 317 (1998).

Probable cause sufficient.

Where a bus passenger spat upon a Metro Transit Police officer and then attempted to flee, the Transit Police had probable cause to make a warrantless arrest of the passenger for assault. Saidi v. Washington Metro. Area Transit Auth., 928 F. Supp. 21 (D.D.C. 1996).

Cited in Cole v. United States, App. D.C., 678 A.2d 554 (1996); Tucker v. United States, 708 A.2d 645 (D.C. 1998).

§ 23-582. Arrests without warrant by other persons.

Cited in Akins v. United States, App. D.C., 679 A.2d 1017 (1996).

CHAPTER 7. EXTRADITION AND FUGITIVES FROM JUSTICE.

Sec.
23-704. Extradition.

§ 23-704. Extradition.

* * * * *

(e) If the chief judge shall order the person delivered over, he may appeal, within twenty-four hours, from that order to the District of Columbia Court of Appeals if the chief judge who rendered the order, or a judge of the District of Columbia Court of Appeals, issues a certificate of probable cause. The appeal shall be expedited by the District of Columbia Court of Appeals. An application for a writ of habeas corpus on behalf of a person who is authorized to demand a hearing pursuant to subsection (d) of this section shall not be entertained if it appears that the applicant has failed to demand such a hearing or that the chief judge, after hearing, has ordered him delivered over, unless it also appears that the remedy by hearing is inadequate or ineffective to test the legality of his detention.

* * * * *

(June 3, 1997, D.C. Law 11-275, § 14(e), 44 DCR 1408; May 22, 1998, D.C. Law 12-114, § 3(b), 45 DCR 486.)

Effect of amendments. — D.C. Law 11-275 substituted "subsection (d) of this section" for "this section" in the second sentence of (e).

D.C. Law 12-114 purported to substitute "subsection (d) of this section" for "this subsection" in the second sentence of (e).

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Legislative history of Law 12-114. — Law 12-114, the "Criminal Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-406, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-233 and transmitted to both Houses of Congress for its review. D.C. Law 12-114 became effective on May 22, 1998.

CHAPTER 9. FRESH PURSUIT.

§ 23-901. Arrests in the District of Columbia by officers of other States.

Cited in Cole v. United States, App. D.C., 678 A.2d 554 (1996).

§ 23-903. "Fresh pursuit" defined.

Cited in Cole v. United States, App. D.C., 678 A.2d 554 (1996).

CHAPTER 11. PROFESSIONAL BONDSMEN.

§ 23-1101. Definitions.

Application of Fourth Amendment. — Bail bondsmen are not subject to the Fourth Amendment as it regards the seizure of persons or personal effects. Akins v. United States, App. D.C., 679 A.2d 1017 (1996).

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

Capitol Police Citation Release. — For designation of a member of the Capitol Police to have responsibility for citation release, and to take bail, collateral, or bond in the same manner as an official of the Metropolitan Police Department of the District of Columbia under this section, see § 108 of Pub. L. 104-186, 110 Stat. 1719.

"Post and forfeiture" procedure. — The "post and forfeiture" procedure in minor criminal or traffic offenses (1) is duly authorized by both statute and rule of court as an appropriate and legal method of terminating such cases, (2) is not an inchoate right, but a privilege recognized by law, court fiat, and longstanding practice, and (3) may be objected to by the government when requested by a given defendant, or even revoked at a later date. District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

The theory behind the "post and forfeiture" process is that in cases of most petty offenses, the defendant is permitted to "post" a security upon release to ensure his return to court for a prospective trial, but then in lieu of appearing for trial, he may then "forfeit" the collateral as a kind of vicarious fine paid, without admitting or adjudicating any criminal or other liability. District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

The legislative branch has established the principle of "posting and forfeiting" collateral, but has left it to the judicial branch, which sets bonds as part of its intrinsic powers and duties, to promulgate a schedule of bond and collateral amounts for various petty offenses and infractions. District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

The "post and forfeiture" procedure is not a right, but a privilege extended as a matter of pragmatic resolution of the vast corpus of cases coming before the superior courts. District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

CHAPTER 13. BAIL AGENCY [PRETRIAL SERVICES AGENCY] AND PRETRIAL DETENTION.

Subchapter I. District of Columbia Bail Agency [Pretrial Services Agency].

Subchapter II. Release and Pretrial Detention

Subchapter I. District of Columbia Bail Agency [Pretrial Services Agency].

§ 23-1301. District of Columbia Pretrial Services Agency.

Cited in Public Defender Serv. v. Saint-Preux, App. D.C., 691 A.2d 1160 (1997); District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.

* * * * *

(e) The agency, when requested by a member or officer or designated civilian employee of the Metropolitan Police Department acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer or designated civilian employee a report as provided in subsection (a) of this section.

* * * * *

(_____, 1999, D.C. Law 12- (Act 12-613), § 8(c), 46 DCR 1328.)

Effect of amendments. — D.C. Law 12-(D.C. Law 12-613), in (e), inserted "or designated civilian employee" twice, and added "of this section."

Temporary amendment of section. — Section 8(c) of D.C. Law 12-(Act 12-492), in (e), inserted "or designated civilian employee" twice, and added "of this section."

Section 13(b) of D.C. Law 12-(Act 12-492) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 8(c) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884).

For temporary amendment of section, see § 8(c) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 8(c) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Section 13 of D.C. Act 12-506 provides for the retroactive application of the act.

Section 13 of D.C. Act 13-13 provides for the retroactive application of the act.

Legislative history of Law 12-(D.C. Act

12-492). — Law 12-(D.C. Act 12-492), the "Metropolitan Police Department Civilianization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-492 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-492) became effective on _____.

Legislative history of Law 12-(D.C. Act 12-613). — Law 12-(D.C. Act 12-613), the "Metropolitan Police Department Civilianization Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-613) became effective on _____.

Cited in Public Defender Serv. v. Saint-Preux, App. D.C., 691 A.2d 1160 (1997).

§ 23-1304. Executive committee; composition; appointment and qualifications of Director.

(a) The agency shall be advised by an executive committee of seven members, of which four members shall constitute a quorum. The Executive Committee shall be composed of the following persons or their designees: the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, the Chief Judge of the United States District Court for the District of Columbia, the Chief Judge of the District of the Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the United States Attorney for the District of Columbia, the Director of the District of Columbia Public Defender Service, and the Director of the Court Services and Offender Supervision Agency for the District of Columbia.

(b) The Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and the Chief Judge of the United States District Court for the District of Columbia, in consultation with the other members of the executive committee, shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia. (July 29, 1970, 84 Stat. 641, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-1304; Feb. 28, 1987, D.C. Law 6-199, § 2, 34 DCR 519; Oct. 7, 1987, D.C. Law 7-31, § 9, 34 DCR 3789; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2426, Pub. L. 105-274, § 7(c)(2)(C).)

Effect of amendments. — Section 11271(a) of Pub. L. 105-33, 111 Stat. 761, rewrote the section.

Section 7(c)(2)(C) of Pub. L. 105-274, 112 Stat. 2426, at the end of (a), substituted "the Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender and Courts Services Agency."

§ 23-1305. Duties of director; compensation.

The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall be compensated as a member of the Senior Executive Service pursuant to subchapter VIII of chapter 53 of title 5, United States Code. (July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-1305; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a).)

Effect of amendments. — Section 11271(a) of Pub. L. 105-33, 111 Stat. 761, rewrote the section.

References in text. — "Subchapter VIII of chapter 53 of title 5, United States Code," referred to in this section, is codified at 5 U.S.C. § 5381 et seq.

§ 23-1306. Chief assistant and other agency personnel; compensation.

The Director shall employ a chief assistant who shall be compensated as a member of the Senior Executive Service pursuant to section 5382 of title 5, United States Code. The Director shall employ such agency personnel as may be necessary properly to conduct the business of the agency. All employees other than the chief assistant shall receive compensation that is comparable to levels of compensation established for Federal pretrial services agencies. (July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-1306; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a).)

Effect of amendments. — Section 11271(a) of Pub. L. 105-33, 111 Stat. 761, rewrote the section.

§ 23-1307. Annual reports.

The Director shall each year submit to the executive committee and to the Director of the Court Services and Offender Supervision Agency for the District of Columbia a report as to the Pretrial Services Agency's administration of its responsibilities for the previous fiscal year. The Director shall include in the report a statement of financial condition, revenues, and expenses for the past fiscal year. (July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-1307; Apr. 30, 1988, D.C. Law 7-104, § 7(g), 35 DCR 147; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2427 Pub. L. 105-274, § 7(c)(2)(D).)

Effect of amendments. — Section 11271(a) of Pub. L. 105-33, 111 Stat. 761, rewrote the section.

Section 7(c)(2)(D) of Pub. L. 105-274, 112 Stat. 2427, deleted the (a) designation at the beginning of the section and substituted "the Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender and Courts Services Agency" in the first sentence.

§ 23-1308. Appropriation; budget.

There are authorized to be appropriated through the State Justice Institute in each fiscal year such sums as may be necessary to carry out the provisions of this subchapter. Funds appropriated by Congress for the District of Columbia Pretrial Services Agency shall be received by the Director of the Court Services and Offender Supervision Agency for the District of Columbia, and shall be disbursed by that Director to and on behalf of the District of Columbia Pretrial Services Agency. The District of Columbia Pretrial Services Agency shall submit to the Director of the Court Services and Offender Supervision Agency for the District of Columbia at the time and in the form prescribed by that Director, reports of its activities and financial position and its proposed budget. (July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II,

§ 210(a); 1973 Ed., § 23-1308; Aug. 5, 1997, 111 Stat. 761, Pub. L. 105-33, § 11271(a); Oct. 21, 1998, 112 Stat. 2427, Pub. L. 105-274, § 7(c)(2)(E).)

Effect of amendments. — Section 11271(a) of Pub. L. 105-33, 111 Stat. 761, rewrote the section.

Section 7(c)(2)(E) of Pub. L. 105-174, 112 Stat. 2427, substituted "Court Services and Offender Supervision Agency for the District of Columbia" for "District of Columbia Offender Supervision, Defender and Courts Services Agency" in the second and third sentences.

Subchapter II. Release and Pretrial Detention.

§ 23-1321. Release prior to trial.

Time limits. — Nothing in this section or § 23-1322 suggests that the time limits of § 23-1322(h) apply to § 23-1325(a). McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

Government interest outweighs drug test intrusion. — Governmental interest outweighed the minimal intrusion imposed upon the defendant by the drug test requirement. Indeed, that interest is compelling — to protect the public from criminal activity and to assure the arrestee's appearance in court, while allowing the arrestee to remain free from detention pending trial. Oliver v. United States, App. D.C., 682 A.2d 186 (1996).

Release conditioned upon drug testing. — The trial court had discretionary authority — implied by authority expressly granted under this section — to condition defendant's release on his submission to drug testing. The Bail Reform Act specifically authorizes a trial court to impose pretrial release conditions requiring an arrestee to "refrain from any use of a narcotic drug or other controlled substance without a prescription," and to undergo treatment for drug dependency. Oliver v. United States, App. D.C., 682 A.2d 186 (1996).

Conditional release should be considered.

If the court determines that unconditional release will not reasonably assure the appearance of the arrestee as required, or will endanger the safety of any other person or the community, the court imposes conditions of release to protect public safety and minimize the risk of flight. Oliver v. United States, App. D.C., 682 A.2d 186 (1996).

Violations of pretrial release orders.

Defendant did not receive sufficient notice, pursuant to § 23-1322(f), that she was not to indirectly contact her former romantic interest through his attorney as a condition for pretrial release, where the only written order regarding the conditions of release did not specifically cover such contact. Smith v. United States, App. D.C., 677 A.2d 1022 (1996).

Cited in District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997); United States v. Long, 125 WLR 2369 (Super. Ct. 1997); Tyler v. United States, App. D.C., 705 A.2d 270 (1997); Southall v. United States, App. D.C., 716 A.2d 183 (1998).

§ 23-1322. Detention prior to trial.

* * * * *

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

* * * * *

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

* * * * *

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

* * * * *

(2) Advise the person of:

* * * * *

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

* * * * *

(June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408.)

Effect of amendments.

D.C. Law 11-273 substituted "or" for "and" at the end of (b)(1)(C).

D.C. Law 11-275 validated a previously made technical correction in (f)(2)(C).

Emergency act amendments.

For temporary amendment of section, see § 3(b) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and see § 3(b) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provided for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — Law 11-273, the "Zero Tolerance for Guns Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

Legislative history of Law 11-275. — Law 11-275, the "Second Criminal Code Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-909, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-520 and transmitted to both Houses of Congress for its review. D.C. Law 11-275 became effective on June 3, 1997.

Time limits. — Nothing in § 23-1321 or in this section suggests that the time limits of subsection (h) of this section apply to § 23-1325(a). McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

Standard. — Preventive detention may be ordered only if a judicial officer finds by clear and convincing evidence that no other condition or combination of conditions will reasonably assure the appearance of the defendant as required or the safety of any other person in the community. Covington v. United States, App. D.C., 698 A.2d 1033 (1997).

"Prospective witness." — Subdivision (b)(1)(C) of this section requires a nexus between the threats or other coercive conduct and the victim's status as a prospective witness. Covington v. United States, App. D.C., 698 A.2d 1033 (1997).

Protective detention of defendant, in order to prevent defendant from threatening, injuring, or intimidating the victim, was inappropriate where there was no evidence that the victim was a "prospective witness" in a separate proceeding involving defendant. Covington v. United States, App. D.C., 698 A.2d 1033 (1997).

Due process does not require clear and convincing evidence. — For pretrial detention, due process does not require a finding by clear and convincing evidence that the defendant committed the charged offenses, even when the evidence of dangerousness consists only of the charged offenses. Jones v. United States, App. D.C., 687 A.2d 574 (1996).

Person charged with crime entitled to present evidence prior to order for pretrial detention. — Notwithstanding the return of an indictment by a grand jury, the express provisions of subsection (e)(1) of this section entitle a person charged with a crime to present evidence about the nature and circum-

stances of the offense and the weight of the evidence against him or her for the purpose of providing information that the trial court must consider in making an individualized determination whether the charged person should be detained pretrial. Tyler v. United States, App. D.C., 705 A.2d 270 (1997).

Scope and extent of evidentiary presentations. — It is within the trial court's sound discretion to determine the appropriate scope and extent of evidentiary presentations and cross-examination, in light of the proffer made and the trial court's assessment of the evidence developed at the hearing. Tyler v. United States, App. D.C., 705 A.2d 270 (1997).

Considerations of judicial efficiency caution against permitting a pretrial detention hearing to turn into a trial of the indicted offense or a means of discovery. Tyler v. United States, App. D.C., 705 A.2d 270 (1997).

Notice of conditions. — Defendant did not receive sufficient notice, pursuant to subsection (f) of this section, that she was not to indirectly contact her former romantic interest through his attorney as a condition for pretrial release, where the only written order regarding the conditions of release did not specifically cover such contact. Smith v. United States, App. D.C., 677 A.2d 1022 (1996).

Evidence sufficient to support denial of pretrial release.

The trial court's finding that there was a substantial probability the defendant committed aggravated assault on a child and that he posed a threat to the safety of the community if he was released justified pretrial detention. Jones v. United States, App. D.C., 687 A.2d 574 (1996).

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997); Southall v. United States, App. D.C., 716 A.2d 183 (1998).

§ 23-1323. Detention of addict.

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

§ 23-1324. Appeal from conditions of release.

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997); Tyler v. United States, App. D.C., 705 A.2d 270 (1997).

§ 23-1325. Release in first degree murder and assault with intent to kill while armed cases or after conviction.

Constitutionality. — Subsection (a) violates neither the due process nor equal protection clause of the federal Constitution. McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

Applicability of Superior Court Criminal Rule 26.2(a). — As of March 31, 1995, Superior Court Criminal Rule 26.2(a) became applicable to pretrial detention hearings held under subsection (a) of this section as the result of an amendment to Superior Court Criminal Rule 46(f)(1). United States v. Gilbert, 124 WLR 2061 (Super. Ct. 1996).

Time limits. — Nothing in §§ 23-1321 or 23-1322 suggests that the time limits of § 23-1322(h) apply to subsection (a) of this section. McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

There are no time limits on pretrial detention of a person charged with assault with intent to kill while armed who is determined to pose a danger to the community and who poses a risk of flight. McPherson v. United States, App. D.C., 692 A.2d 1342 (1997).

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997); Tyler v. United States, App. D.C., 705 A.2d 270 (1997).

§ 23-1327. Penalties for failure to appear.

No error where defendant advised of incorrect penalties. — A defendant's challenge to a conviction under the federal Bail Reform Act because the release order incorrectly indicated the penalties for failure to appear under the District's Bail Reform Act rather than the federal Bail Reform Act was without merit; the defendant failed to show any prejudice as a result of being advised of the more lenient penalties applicable under the District's statute. United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997).

Wilfulness rebutted by evidence of defendant's state of mind. — Although fear of coming to court is not a defense to the Bail Reform Act, evidence was sufficient to show that reasonable jurors could have interpreted the defendant's explanation more broadly to encompass fear in the context of both the Bail Reform Act charge and the distribution charge for which he was being tried simultaneously where the defendant offered evidence that he feared another whom he was to name as the perpetrator of the distribution offense. In that regard, the defendant's explanation constituted an exception to the hearsay rule because it showed his state of mind, and could be used to vitiate any notion of consciousness of guilt as to either the Bail Reform Act or the distribution charge. Price v. United States, App. D.C., 697 A.2d 808 (1997).

Adequate notice.

Although the written notice of the date upon which the defendant was to return to court did not specify the time of day at which she was to appear, where there was testimony that defendants are generally notified orally regarding the time of the day at which they are to return to court and where the defendant admitted that she received oral as well as written notice of the date of her sentencing, the jury's determination that she received adequate notice was not clearly erroneous. Cooper v. United States, App. D.C., 680 A.2d 1370 (1996).

Voluntary intoxication or drug use. — Since voluntary intoxication is not a valid defense to a general intent crime and since voluntary intoxication could not be used in conjunction with a valid defense to a general intent crime, the trial court did not err in finding that the defendant's argument that her drug use supported the defense of mistake was improper. Cooper v. United States, App. D.C., 680 A.2d 1370 (1996).

Evidence relating to willfulness. — Defendant's five-month delay in contacting authorities after failing to appear for his scheduled court date was decidedly relevant to the issue of whether that failure to appear was willful. Foster v. United States, App. D.C., 699 A.2d 1113 (1997).

Burden of proof. — If there exist special circumstances that explain a defendant's failure to appear for a scheduled court date, the defendant relying on those special circumstances must bear the burden of showing them. Foster v. United States, App. D.C., 699 A.2d 1113 (1997).

Requirements for conviction. — To convict an individual under the Bail Reform Act, the trier of fact must find (1) that the defendant was released pending trial or sentencing, (2) that he was required to appear in court on a specified date or at a specified time, (3) that he failed to appear, and (4) that his failure was willful. Foster v. United States, App. D.C., 699 A.2d 1113 (1997).

Cited in Thompson v. United States, App. D.C., 690 A.2d 479 (1997); Medrano-Quiroz v. United States, App. D.C., 705 A.2d 642 (1997); Brown v. United States, App. D.C., 718 A.2d 95 (1998); McDaniels v. United States, App. D.C., 718 A.2d 530 (1998).

§ 23-1328. Penalties for offenses committed during release.

Cited in Newman v. United States, App. D.C., 705 A.2d 246 (1997).

§ 23-1329. Penalties for violation of conditions of release.

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(b) Proceedings for revocation of release may be initiated on motion of the United States Attorney. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer finds that —

(1) there is clear and convincing evidence that such person has violated a condition of his release; and

(2) based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that such person will not flee or pose a danger to any other person or the community. The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than $1,000, or both.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to § 23-1322(d)(7), may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law.

(e) A person who has been conditionally released and who violates a condition of that release by using a controlled substance or by failing to comply with the prescribed treatment for use of a controlled substance, may be ordered by the court, in addition to or in lieu of the penalties and procedures prescribed in subsections (a) through (d) of this section, to temporary placement in custody, when, in the opinion of the court, such action is necessary for treatment or to assure compliance with conditions of release. A person shall not be subject to an order of temporary detention under this subsection, unless before any such violation and order, the person has agreed in writing to the imposition of such an order as a sanction for the person's violation of a condition of release. (July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); 1973 Ed., § 23-1329; July 3, 1992, D.C. Law 9-125, § 7, 39 DCR 2134; Oct. 10, 1998, D.C. Law 12-165, § 3, 45 DCR 2980.)

Effect of amendments. — D.C. Law 12-165 added (e).

Legislative history of Law 12-165. — Law 12-165, the "Truth in Sentencing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-523, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 23, 1998, it was assigned Act No. 12-343 and transmitted to both Houses of Congress for its review. D.C. Law 12-165 became effective on October 10, 1998.

Bench warrants. — Bench warrants are not governed by the one-year limitation period of § 23-563(b), but rather are governed by this section, which sets forth no such time limit on the validity of misdemeanor warrants. United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

A warrant issued under this section because of a defendant's failure to appear is a device by which a court restores to its custody a person who is already within its jurisdiction, i.e., one who has been arraigned and formally charged with an offense; these warrants are thus distinguishable from warrants issued under § 23-563. United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

Notice. — Notice requirements were met when defendant received notice of contempt charge through the motion of the government to hold a hearing, pursuant to subsection (c) of this section, on whether defendant should be held in contempt of court for violating the conditions of her pretrial release; the contempt charges did not have to be set forth in an information, indictment, or show cause order. Smith v. United States, App. D.C., 677 A.2d 1022 (1996).

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997); Brown v. United States, App. D.C., 718 A.2d 95 (1998).

§ 23-1330. Contempt.

Cited in United States v. Long, 125 WLR 2369 (Super. Ct. 1997).

§ 23-1331. Definitions.

As used in this subchapter:

* * * * *

(3) The term "dangerous crime" means (A) taking or attempting to take property from another by force or threat of force, (B) unlawfully entering or attempting to enter any premises adapted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein, (C) arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business, (D) first degree sexual abuse, or assault with intent to commit first degree sexual abuse, (E) unlawful sale, distribution of or possession with intent to distribute a controlled substance, as "controlled substance" is defined in the District of Columbia Code or any Act of Congress, if the offense is punishable by imprisonment for more than one year, or (F) possessing an unregistered firearm, carrying a pistol without a license, or carrying a concealed weapon in a place other than the person's dwelling place, place of business, or on other land possessed by the person.

* * * * *

(June 3, 1997, D.C. Law 11-273, § 3(a), 43 DCR 6168.)

Effect of amendments.

D.C. Law 11-273 in (3), deleted "or" at the end of (D), added "or" at the end of (E), and added (F).

Emergency act amendments.

For temporary amendment of section, see § 3 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 3(a) of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 3(a) of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Section 6 of D.C. Act 11-436 provided for the application of the act.

Section 6 of D.C. Act 12-35 provides for application of the act.

Legislative history of Law 11-273. — See note to § 23-1322.

Cited in United States v. Gloster, 969 F. Supp. 92 (D.D.C. 1997).